FIRST - TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	:	**BIR/44UB/LIS/2018/0042 - 53**
Property	:	**1 to 12 Charles Wills Court Coleshill Road Atherstone CV9 1BT**
Applicants	:	**1. Jason Latham (Apt 1)** **2. Lynda McKenzie (Apt 2)** **3. Steven Riley (Apt 3)** **4. Steven Brotherhood (Apt 4)** **5. Leanne Sutherland (Apt 5)** **6. Tom Beale (Apt 6)** **7. Marjorie Goffin (Apt 7)** **8. Simon Greenfield (Apt 8)** **9. Rob and Jane Sutton (Apt 9)** **10. Alan Jones (Apt 10)** **11. Phil Evans (Apt 11)** **12. Amy Dykes (Apt 12)** **13. R & N Stokes (Apt 6)**
Representative	:	**Hugh McKenzie**
Respondent	:	**Gateway Holdings (NWB) Limited**
Representative	:	**J B Leitch, Solicitors**
Type of Applications	:	**Applications for a determination of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985.** **Applications for an Order under section 20C of the Landlord and Tenant Act 1985.** **Applications for an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	:	**Judge C Goodall** **Deputy Regional Valuer V Ward FRICS** **Mr R P Cammidge FRICS**
Date and place of hearing	:	**21 and 22 May and 31 July 2019 at Nuneaton Court Centre**
Date of this decision	:	**26 September 2019**

DETERMINATION

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Background

1. The Applicants are the current and (in some cases) former lessees of 1 to 12 Charles Wills Court Coleshill Road Atherstone CV9 1BT ("the Property").

2. The applications in this case are for a determination of liability to pay and reasonableness of the service charge levied by the Respondent upon all Applicants except the second and the eight applicants (Mrs McKenzie and Mr Greenfield) for the service charge years 2011 to 2016, and upon all the Applicants (including Mrs McKenzie and Mr Greenfield) for the service charge years 2017 – 19 (in respect of which the application relating to 2019 is for determination of the budgeted service charge, rather than the actual service charge. The service charge year runs from 1 January to 31 December in each year.

3. In a decision dated 19 December 2017 under reference BIR/44UB/LIS/2016/0043 ("the 2017 Decision"), in which Mrs Lynda McKenzie and Mr Simon Greenfield were the applicants, the Tribunal had previously ruled on reasonableness and liability to pay for the those applicants for the years 2011 – 2016. Following an appeal, that decision was changed, in relation to Mrs McKenzie by a decision of the Upper Tribunal dated 23 October 2018 to restrict the impact of the 2017 Decision to the period she was the owner of her apartment.

4. The applications in this case were made in August 2018. This Tribunal directed (in directions dated 10 September 2018), that it intended to dispose of the applications for determination of the service charges payable for 2011 – 2016 without a hearing and on the basis of the determination that had already been made in respect of those years in the 2017 Decision, unless any party objected.

5. An objection was raised by the Respondent. The objection was limited to the issue of whether the Applicants seeking a determination in relation to 2011 – 2016 had agreed or admitted the service charges levied for those years such that the Tribunal had no jurisdiction to consider their applications pursuant to section 27A(4)(a) of the Landlord and Tenant Act 1985 ("the Act").

6. The Tribunal directed, on 6 February 2019, that there would be an oral hearing for consideration of the applications, with the issue for the 2011 – 2016 service charge years being limited to the application of section 27A(4)(a) of the Act. Were the Applicants able to persuade the Tribunal that the provision did not apply, the quantum of the service charge payable for 2011 – 2016 would be as was determined in the 2017 decision.

7. The case was heard at Nuneaton Court Centre over three days on 21 and 22 May and 31 July 2019. The Applicants were represented by Mr McKenzie. The Respondent was represented by Mrs K Coleman, their in-house solicitor.

8. The hearing was preceded by an inspection of the Property by the Tribunal with the parties being present.

9. As is apparent from this background review, this application can be separated into two parts.

a. Firstly, there is an application for a determination of liability to pay service charges for the years 2011 to 2016 brought by the all the Applicants except Mrs McKenzie and Mr Greenfield ("the First Issue").

b. Secondly, there is an application for a determination of liability to pay a service charge for the years 2017 – 2019 by all the Applicants ("the Second Issue").

Inspection

10. The Tribunal inspected the Property on 21 May 2019 in the presence of the parties' representatives. Some of the Applicants were also present. The state of the Property was broadly the same as it was on the inspection carried out for the 2017 Decision. As nothing turns on what was seen on 21 May 2019, readers are referred to the 2017 Decision for a more detailed description of the Property.

The Leases

11. The Tribunal has a copy of the First Applicant's lease for apartment 1 and assumes that the lease of all the leases for the apartments in the Property are similar. The term is 125 years from 24 June 2005 with payment of a premium and a rising ground rent starting at £200 pa.

12. Arrangements for the service charge are dotted about the lease. In the definitions section, significant definitions relating to the service charge are:

"Buildings:	Means the block comprising self-contained flats and such other buildings and structures as are erected on the Development
Development:	Means the land comprised in the Title Number referred to above shown edged blue on Plan 1 [Plan 1 was not supplied, but the Tribunal has worked on the basis that this area is the land on which the flats, the car park and the external amenity areas are located]
Flats:	Means the 12 self-contained apartments at the Development and their parking spaces
Maintenance Charge:	Means the Maintenance Charge Proportion specified in the Particulars of the Maintenance Costs …
Maintenance Costs:	Means the amount of money expended or reserved in respect of the matters set out in the Fifth Schedule Part Three
Property:	Means the Apartment and the Car Parking Space"

13. The Particulars specify that the Maintenance Charge Proportion is 8.33% for Apartment 1. The Tribunal assumes this is identical for all apartments so that the total service charge percentage for all 12 apartments is 100%.

14. The tenant covenants (Clause 3 and Fourth Schedule paragraph 16):

"To pay to the Landlord the "Maintenance Charge" …"

15. The landlord covenants (Clause 4 and Fifth Schedule Part Two) to (inter alia):

"1. Repair and redecoration

To maintain, repair, clean, redecorate, replace, renew and rebuild (whenever necessary or desirable) complying with codes of practice and the requirements of statutes and regulations the main structures, roofs, foundations, external walls, party walls and structures, boundary walls, fences and railings, window frames, doors and door frames of the Buildings

2. External areas

To maintain, repair, light, clean, rebuild, and resurface (whenever necessary or desirable) complying with the codes of practice and the requirements of statutes and regulations the Accessways, car parking areas, drives, paths, lightwells and open areas on the Development

3. Service Installations

To maintain, repair, redecorate, replace and renew (whenever necessary or desirable) complying with the codes of practice and the requirements of statutes and regulations the Service Media other than those exclusively serving any of the Flats

4. Common Parts

To maintain, repair, redecorate, furnish, replace and renew (whenever necessary or desirable) light, heat and clean complying with the codes of practice and the requirements of statutes and regulations the entrances, halls, landings, staircases, smoke lobbies, fire escapes, and other parts of the Development (if any) available for use by the Tenant in common with other occupiers of the Flats

5. Plant and Equipment

To operate, maintain, repair, redecorate, replace and renew (whenever necessary or desirable) in compliance with codes of practice and the requirements of statutes and regulations the lighting, fire alarm systems, sprinkler systems, entry phone systems, television and radio relay systems (if any) and any other plant and equipment installed in the Development available for use by the Tenant in common with other occupiers of the Flats

...

8. Gardens

To carry out landscaping, gardening, and the provision and cultivation of plants, shrubs, and flowers in, and ensure compliance with codes of practice and the requirements of statutes and regulations affecting, gardens and landscaped areas of the Development ..."

16. Part Three of the Fifth Schedule sets out the costs that are included within the definition of Maintenance Costs. The costs of providing the works and services listed in the preceding paragraph are included within that definition. Other costs included are (inter alia):

"3. The cost of employing managing agents or other duly authorised agents for the general management of the Development

4. The cost of employing managing or other duly authorised agents, architects, surveyors or other professional persons to arrange and supervise the execution of any works or the provision of any service in or on the Development

5. The cost of keeping the books and records of the expenditure comprised in the Maintenance Costs and of preparing and (if applicable) auditing and certifying the Maintenance Costs and the cost of maintaining the books and records of the Landlord and the cost of preparing and filing all necessary returns and accounts

...

8. The cost of employing or engaging solicitors, counsel and other professional persons in connection with the management of the Development the administration and collection of the Maintenance Charge payable by the Tenant and by the other tenants in the Buildings

9. The cost of bringing or defending any action or proceedings and making or opposing any application"

17. The mechanism for calculation and payment of the service charges is set out in the Sixth Schedule.

18. Paragraphs 1 and 2 provide that the Respondent should prepare an estimate of the service charge for each year, which the lessees must pay by equal half yearly payments in advance.

19. Paragraph 4 deals with the calculation and the payment of the final service charge for each year. It provides:

"4.1 The Landlord shall keep proper books and records of the Maintenance Costs and as soon as practicable after each Accounting Date the Landlord shall prepare a Certificate of Maintenance Costs of the Accounting Period ending on the Accounting Date

4.2 The Certificate shall contain a summary of the Maintenance Costs to which it relates

4.3 The Certificate shall be signed by an accountant or firm of accountants (who shall be qualified as specified in Section 28 of the Landlord and Tenant Act 1985) and shall include a certificate by such accountant or accountants that the summary of Maintenance Costs are sufficiently supported by accounts, receipts and other documents which have been produced to him or them

4.4 Within 14 days of signing, a copy of each Certificate shall be served upon the Tenant together with a statement showing:

4.4.1 the Maintenance Charge payable by the tenant in respect of the Accounting Period to which the Certificate relates

4.4.2 the Interim Maintenance Charge (and Supplemental Interim Maintenance Charge, if any) paid by the Tenant on account of the Maintenance Charge; and

4.4.3 the amounts (if any) by which the Maintenance Charge exceeds or falls short of the aggregate of the payments received by way of Interim Maintenance Charge and Supplemental Interim Maintenance Charge

4.5 Within 28 days from the service of each statement under clause 4.4 above, the Tenant shall pay to the Landlord (together with value added tax if payable) the amounts (if any) by which the stated Maintenance Charge exceeds the Interim Maintenance Charge and Supplemental Interim Maintenance Charge stated to have been received on account or in the event of any overpayment by the Tenant the Landlord shall give credit for such overpayment"

The Law

Law on the First Issue

20. Sections 27(A)(4) & (5) of the Landlord and Tenant Act 1985 provide:

(4) No application under section (1) or (3) may be made in respect of a matter which –

"(a) Has been agreed or admitted by the tenant…

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

21. There is relevant case law on the application of this statutory provision which the Tribunal must consider.

Shersby v Grenehurst Park Residents Co Ltd [2009] UKUT 241 (LC) (Shersby)

22. Shersby is a case primarily about apportionment of service charges. A subsidiary issue was raised in that case concerning the payability of insurance premiums. Mr Shersby was a tenant. He paid his insurance premiums without objection for the years 1997 to 2004. In 2005, Mr Shersby made an application for a determination of service charges to the FTT concerning the apportionment issue, but it was withdrawn. The reason was given as:

"As regards his withdrawal of the 2005 application to the LVT the Appellant stated that he did not think the case had proceeded correctly and he did not have time to draw together all the necessary material and he understood that he could make a further application raising the points in issue."

23. Mr Shersby then made another application in 2007 for consideration of both the apportionment question and the payability of the insurance invoices. In this application, the landlord argued:

"As regards the years 1997 to 2004 Mr Bhose [the landlord's counsel] submitted that the Appellant was not entitled to maintain an application under section 27A in respect of these because he had agreed or admitted the amount payable. [sub-section 4 was then set out]

Mr Bhose submitted that the Appellant had done significantly more than merely make payment. He had continually made payment from 1997 onwards and had raised no query regarding this insurance prior to his application to the LVT in 2005. Nor had he made any complaint in this 2005 application, which in due course he withdrew. This long period of payment and absence of challenge and omission from the points challenged in the 2005 application all should be taken together to indicate that the Appellant had agreed or admitted these sums."

24. The Upper Tribunal agreed with Mr Bhose, saying:

"44 As regards the years 1997 to 2004 inclusive I accept Mr Bhose's argument that the Appellant is not entitled to make an application under section 27A in respect of these payments. I find that he has agreed or admitted these sums and that section 27A(4) prevents his application in respect of these years. As regards section 27A(5) this provides that the Appellant is not to be taken to have agreed or admitted any matter by reason only of having made any payment. However, the Appellant has done substantially more than merely make payments in respect of these years. He has not only made the payments but has waited a long time (namely until the 2007 application) before seeking to challenge them, and has in the meantime made a separate application to an LVT raising various matters regarding services charges but not raising any matter as regards these insurance premiums. The 2005 proceedings were then withdrawn without the insurance premiums ever being raised as an issue. The combination of these repeated payments, without any complaint or reservation, coupled with the lapse of time and with the express challenging in formal 2005 proceedings of certain matters (but not these insurance matters) leads me to conclude that the Appellant must be taken to have agreed or admitted these premiums."

Cain v The London Borough of Islington [2015] UKUT 0542 (Cain)

25. In Cain, Mr Cain acquired his apartment in 2002. In 2014, he commenced proceedings for a determination of whether certain invoices incurred in the years 2002 – 2007 were reasonably incurred. He had in fact paid the service charges asked from him for those years.

26. The FTT, and the Upper Tribunal, held that he could not pursue his application for a determination relating to these invoices because he had "agreed or admitted" them.

27. The Upper Tribunal said:

> "14. Before considering the facts of this case, it is necessary to consider the meaning and effect of section 27A(5). An agreement or admission may be express, or implied or inferred from the facts and circumstances. In either situation the agreement or admission must be clear, the finding being based upon the objectively ascertained intention of the tenant which may be express or implied or inferred from the conduct of the tenant – usually an act or a series of acts or inaction in the face of specific circumstances or even mere inaction over a long period of time or a combination of the two.
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> 15. Absent sub-section (5) and depending upon the facts and circumstances, it would be open to the F-tT to imply or infer from the fact of a single payment of a specific sum demanded that the tenant had agreed or admitted that the amount claimed and paid was the amount properly payable, a fortiori where there is a series of payments made without challenge or protest. Part of the reason for this is that people generally do not pay money without protest unless they accept that that which is demanded is properly due and owing, and certainly not regularly over a period of time. Whilst it would generally be inappropriate to make such an implication or inference from a single payment because it could not be said that the conduct of the tenant was sufficiently clear, where there have been repeated payments over a period of time of sums demanded, there may come a time when such an implication or inference is irresistible.
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> 16. Taking matters one step further, it would be open to the F-tT to make such a finding even where there had been no payment at all but there were other facts and circumstances clearly indicating that the tenant had agreed or admitted the amounts claimed. What is required is some conduct which gives rise to the clear implication or inference that that which is demanded is agreed or admitted by the tenant. The relevant question, therefore, is: are there any facts or circumstances from which it can properly be inferred or implied that the tenant has agreed or admitted the amount of service charge which is now claimed against him?
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> 17. The effect of sub-section (5), however, is to preclude any such finding "by reason only of [the tenant] having made any payment" (italics supplied). The reference to the making of "any payment", and "only" such payment, indicates that whilst the making of a single payment on its own, or without more, will never be sufficient to found the finding of agreement or admission, the making of multiple payments even of different amounts necessarily over a period of time

(because that is how service charges work) may suffice. Putting it another way, the making of a single payment on its own, or without more, will never be sufficient; there must always be other circumstances from which agreement or admission can be implied or inferred. And those circumstances may be a series of unqualified payments over a period of time which, depending upon the circumstances, could be quite short, it always being a question of fact and degree in every case.

18. Looking at the reasoning behind this provision, no doubt the reason why the making of a single payment on its own, or without more, would never suffice is that such will often be insufficiently clear but also, in the peculiar area of landlord and tenant, it is common enough for tenants to pay (even expressly disputed) service charges so as to avoid the risk of forfeiture and preserve their home and the value of their lease. But the reason why a series of unqualified payments may, depending on the circumstances, suffice is because the natural implication or inference from a series of unqualified payments of demanded service charges is that the tenant agrees or admits that which is being demanded. Putting it another way, it would offend commonsense for a tenant who without qualification or protest has been paying a series of demanded service charges over a period of time to be able to turn around and deny that he has ever agreed or admitted to that which he has previously paid without qualification or protest. Self-evidently, the longer the period over which payments have been made the more readily the court or tribunal will be to hold that the tenant has agreed or admitted that which has been demanded and paid. It is the absence of protest or qualification which provides the additional evidence from which agreement or admission can be implied or inferred."

28. On the question of the length of time that must pass before a payment can be treated as being "agreed or admitted", the Upper Tribunal in Cain said:

"26. It in my judgment, and contrary to the submissions of Ms Gourlay, is no bar to such a finding that a particular act or date can not be pointed to. This is because it is inherent in the nature of the facts and circumstances (inactivity; payment without qualification for a long time) that it is not possible to pinpoint any particular date upon which the agreement or admission was or should be treated as having been made. Here, the F-tT was invited to find that the claim should be limited to six years prior to the making of the application on the implicit footing that it was to be implied or inferred that the applicant had agreed or admitted the first six years' service charges at some stage thereafter although the precise date could not be pinpointed.

27. There is, however, no magic to the claim being limited to six years before the making of the application: that is was what the F-tT was asked to find, and it acceded to that request. The fact that it coincides with what is frequently the applicable limitation period is of no materiality because a finding of admission or agreement is a finding of fact to the effect that the tenant has agreed or admitted the amount due so ousting the jurisdiction of the F-tT and indeed the county court by dint of section 27A(4)(a): it is not a question of limitation. Had the F-tT been asked to find that agreement or admission should be treated as

having been made within a shorter period before making the application, the F-tT would, depending on the facts and circumstances, have been entitled to so find."

Marlborough Park Services Ltd v Mr Micha Leitner [2018] UKUT 230 (LC) (Leitner)

29. In Leitner, in March 2016 Mr Leitner received default judgements for about £5,500 in respect of arrears of service charges for the year's March 2014 to October 2016. He said he had never received the bills. In response he brought tribunal proceedings for a determination of the service charges payable for a number of prior years, including charges for the years 2007 to 2012, though charges for that period had not previously been challenged. The landlord applied for the claim to be struck out. The grounds for the application to strike out this part of the claim were that the charges had been "agreed or admitted". The FTT refused. The landlord appealed.

30. The UT said:

"29. The appellant contends that the respondent's conduct in paying service charges since 2007 without qualification or protest has been such that it is safe to infer an agreement that he was liable for those charges. This submission is in my view of particular significance when considering the service charges which pre-date but are not the subject of the default judgments to which reference has been made. 30. In order to satisfy the FTT that it should strike out the proceedings as it relates to these charges, the appellant must prove that the respondent had agreed or admitted those charges. Putting to one side the letter of 21 March 2016, consideration should be given to the conduct of the respondent in the period between 2007 and 2012. The charges for that period have been paid, and charges accrued subsequently have led, as explained above, to default judgments being entered.

31. The Upper Tribunal then reviewed Shersby and Cain, and continued:

"33. In my judgment, the FTT erred in law in failing to recognise the significance of the payment of service charge without protest over a period of time long before the application to the FTT was made, the issue of proceedings in the county court to enforce payment of subsequent amounts of service charge and the entry of default judgments in favour of the lessor. As the Tribunal said in Cain at [18], "it would offend common sense for a tenant who without qualification or protest has been paying a series of demanded service charges over a period of time to be able to turn around and deny that he has ever agreed or admitted to that which he has previously paid without qualification or protest.

34. It should be noted that the FTT acknowledged the weakness of the respondent's claim in this regard where, having observed that the application related to service charges back to 2007, it stated that the respondent had "not taken timely action in respect of those charges and we find it likely that little evidence will be available of the services provided" but added "We do not

consider this should prevent the application proceeding in its entirety." On the basis of this statement, with its reference to the "entirety" of the application, it appears that the FTT may not have taken into account its statutory duty to strike out part of the proceedings or case where it does not have jurisdiction in relation to that part: see rule 9(2) above.

35. The Tribunal takes the view that the FTT should have found that the respondent had agreed or admitted the service charges due before 1 April 2012, and have struck out that part of the respondent's claim which related to service charges between 2007 and 1 April 2012."

32. There is a further legal issue on the application of section 27A (4) of the Act which was raised by the Tribunal; namely if the service charge payer has merely paid an on account service charge demand, can that payer still be said to have "agreed or admitted" the service charge paid, bearing in mind that a final service charge account and invoice had not been levied?

33. In paragraph 30 of *Warrior Quay Management Company Ltd, Jomast Developments Ltd v Captain Z C Joachim* 2008 WL 168730, Judge Huskinson said, on this point:

"…all of the sums so far demanded from the Respondents for any of the presently relevant years are sums payable not by way of final service charge payment but by way of payment on account. I am unable to see how the payment, without immediate or early protest, of an amount which is merely payable on account (with the lease contemplating that there will ultimately be certified the final amount for the year) can be taken as an agreement not to dispute the amount finally payable for that year. The Respondents argued that none of them should be taken to have agreed the amount payable for any service charge year. I accept that argument."

34. This point had been raised by the FTT in Leitner, which had said that:

"Having considered the accounts annexed to the [appellant's] position statement, it is noted that default judgements likely relate to service charges on account or budgeted amounts and not to the final out turn. This is apparent from the date of the certified accounts. Accordingly, it is open to the [respondent] to request a determination of the final sums now that this expenditure has crystallised. Accordingly, the [appellant's] strike out application fails in that regard."

35. This point was not however accepted by the Upper Tribunal in its ruling in Leitner discussed above.

Law on the Second Issue

36. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is (under subsection (1)) or would be (under subsection (3)) payable and if it is or would be, the Tribunal may also decide:-

a. The person by whom it is or would be payable
b. The person to whom it is or would be payable

c. The amount, which is or would be payable
d. The date at or by which it is or would be payable; and
e. The manner in which it is or would be payable

37. Section 19(1) of the Act provides that:

"Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

38. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. If the tenant gives evidence establishing a prima facie case for a challenge, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions on the strength of the arguments. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2EGLR100).

39. In relation to the test of establishing whether a cost was reasonably incurred, in Forcelux v Sweetman [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

"39. ...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 judgement, two distinctly separate matters I have to consider. Firstly, 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. The 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."

Consideration of the First Issue

The Evidence

40. The Applicants on the First Issue, with details of their periods of ownership, are:

Apt No.	Name	Purchase date	Sale date
1	Mr Jason Latham	Before 2011	Not sold
3	Mr Stephen Riley	27/08/2013	Sept/Oct 2018
4	Mr Stephen Brotherhood	Before 2011	10/06/2019
5	Mrs Leanne Sutherland	Before 2011	Not sold
13	Mr R & Mrs N Stokes	Before 2011	23/06/2015
6	Mr Tom Beale	23/06/2015	Not sold
7	Mrs Marjorie Goffin	Before 2011	Not sold
9	Mr R & Mrs J Sutton	Before 2011	Not sold
10	Alan Jones	Before 2011	Not sold
11	Philip Evans	Before 2011	Not sold
12	Amy Dykes	Before 2011	Not sold

The Applicants' case

41. Mr McKenzie said that the Applicants to whom the First Issue applied denied that they had agreed or admitted their service charges for the period 2011 to 2016. The evidence in support was as follows.

42. Firstly, the Tribunal heard oral evidence from the seven lessees (who had all also provided written statements), whose evidence is summarised below, and also considered written statements alone from Mr Latham (the First Applicant) and Mr Brotherhood (the Fourth Applicant). No statements or evidence were provided by Mrs Goffin (the Seventh Applicant) or Mr & Mrs Stokes (the Thirteenth Applicant). In the case of Mrs Goffin, the Tribunal was informed by Mr McKenzie, who was representing her, that she is an elderly lady who is very stressed by the situation. The Tribunal was also supplied with a bundle of documentation which was said to be the evidential basis to establish that the Applicants were disputing their service charges.

43. Mrs McKenzie (the Second Applicant) and Mr Greenfield (the Eighth Applicant) are of course not involved in the First Issue as their liabilities for service charges for 2011 to 2016 were determined in the 2017 Decision and the subsequent appeal.

Mr S Riley (the Third Applicant)

44. Mr Riley purchased his apartment on 27 August 2013 and sold it again in the autumn of 2018. He had initially paid his interim service charge every six months, as demanded. He said that he paid the bills as demanded because he thought it was right to be a good leaseholder, even though he was dissatisfied with the service provided. He also thought he would be breaching his lease if he did not pay. He had paid a reduced amount for 2018. This came about because in January 2018, Mr McKenzie held a meeting with Mr Lawton (from the Respondent company), at which he believed he had negotiated a reduced service

charge budget for 2018 which took into account the determinations contained in the 2017 Decision. According to Mr McKenzie, Mr Lawton later said he would have to put their discussions "on hold", so the agreement in the end was not applied by the Respondent. Mr Riley, though, paid his 2018 charge at the rate Mr McKenzie thought he had agreed with Mr Lawton. He had to pay all the arrears that had built up when he sold his flat, in order not to jeopardise the sale, as the Respondent had refused to cooperate in providing the leaseholder information pack required by a buyer's solicitor until he had.

45. Mr Riley said in his statement that he thought the Respondent had failed to provide regular cleaning and garden services, had not maintained the security gates, had not maintained the windows and doors, and had not arranged for the lighting to be on at the correct times.

Mrs L Sutherland (the Fifth Applicant)

46. Mrs Sutherland gave oral evidence to the Tribunal. She said she had complained about the Respondent's failure to maintain the windows since the day she moved in, which was in about 2008. Her contacts were always by email, but she was unable to find copies from the earliest years.

47. Mrs Sutherland produced a poor copy of an email from Penny Hitch, an employee of the Respondent, which confirmed receipt of an earlier email in which it is clear from Penny Hitch's response that Mrs Sutherland had been querying the service charge budget. The Tribunal is satisfied that the Penny Hitch email is dated 20 August 2010, so Mrs Sutherland has been objecting to the quality and extent of services since at least that date. She had specifically raised, as well as the windows, the gardening service, window cleaning, the general cleaning service, and cleaning of the bin store.

48. It seems that, despite her complaints, Mrs Sutherland nevertheless paid the interim service charges demanded by monthly payments. She said that if she were ever to fall behind with her payments, she would receive a threatening letter, and her mortgage company would be contacted by the Respondent, so she felt she had no alternative but to pay.

Mr T Beale (the Sixth Applicant)

49. Mr Beale moved to his apartment on 23 June 2015. He had always paid his service charge on time as he understood if he didn't, he would be in breach of his lease. He does not think that the Respondent has carried out its responsibilities as manager of the Property, particularly in respect of maintenance of the windows, gate maintenance, and management of the lighting system. He has personally carried out work that the Respondent should have done, in that he replaced all the smoke alarms, he sweeps the communal areas, weeds the garden, trims the bushes, and collects the rubbish. He has not contacted the Respondent

to complain about the service charge, but he is aware of and shares the general dis-satisfaction of the lessees with the Respondent.

Mr & Mrs Sutton (the Ninth Applicant)

50. Mrs Sutton told the Tribunal that she had contacted the Respondent on many occasions both by telephone and email about service and repair issues at the Property. She informed Gateway about the condition of the windows, saying she daren't open them because of their condition.

51. Mrs Sutton said, with a sense of pride, that they always paid their bills. They did not want their mortgage company informed that they had not paid a service charge bill for fear of the ramifications of not paying from their mortgage company and the potential impact on the value of their property. Mr Sutton confirmed that they had never been overdrawn and had never not paid a bill they owed. He also said he was totally disillusioned with the Respondent. He had many complaints about their work, but he did not know which way to go to resolve this until Mr McKenzie provided the option of coming to the Tribunal. He said he had never expressly admitted that the bills from Gateway were agreed.

52. In their written statement, Mr & Mrs Sutton confirmed that they had contacted the Respondent on many occasions during the nine years they have lived at their apartment. They had been threatened by the Respondent that they would inform their mortgage company of any non-payment and would incur a fee of £25 plus VAT should they have to take that action. They expressed dis-satisfaction with the service provided by the Respondent in a number of areas, including management lighting of the car park lighting, the electric gates, repairs to the windows, and the cleaning regime.

53. On cross-examination by Mrs Coleman, Mr Sutton said that he paid the service charges by cheque. He did not remember whether he had ever accompanied the cheque with a letter stating that he was unhappy with the service charge.

Mr & Mrs A Jones (the Tenth Applicant)

54. Mr Jones said that the Respondent are a nightmare. They had failed to carry out their decorating responsibilities, maintain the gates, entrance doors, locks, lights, and fire alarms. He had made five or six phone calls to complain. He was not able to recall when, but thought he had raised a dispute before 2018. He felt that lessees had no choice but to pay. He was not resident at the Property, which meant he felt "out of the loop" in discussions between the Applicants. He had paid the reduced service charge amount in 2018 which Mr McKenzie thought he had negotiated with Mr Lawton, which had resulted in the Respondent contacting his mortgage company and charging him £30 for late payment and then £300 for pre-action legal expenses. The lessees were small people against a big company. He felt this was wrong.

Mr Evans (the Eleventh Applicant)

55. For the period 2011 – 2016, Mr Evans said he had considered the service provided by the Respondent was poor. He did not raise any issues directly with the Respondent himself during that period, though there were regular conversations between the lessees in which general dis-satisfaction was expressed.

56. Since 2017 he had become more willing to challenge the service charges, but this had resulted in additional charges being levied upon him, and he had been threatened with county court action, his mortgage company had been approached for payment of service charges, and he had been charged with a late payment charge.

57. Mr Evans said he believed a number of apartment owners had been contacting the Respondent about the service charges during 2011 – 2016, but the lessees had hoped that they could engage with the Respondent to resolve the issues of concern. It took some time for it to become clear that the lessees and the Respondent were not finding common ground.

58. Mr Evans said he had not really known what to do about challenging the service charges. He thought he was in isolation. He had not taken any advice and was unaware that there was anything he could do to challenge his service charge. He accepted that he paid the service charges by regular cheques. He said he had sent one cheque accompanied by a letter pointing out that if the Respondent carried out work at the Property at the same speed with which it chased payment of its invoices, it would be an exceptional company. He did not know when that letter might have been sent.

59. In his statement, Mr Evans said payment of service charges had been against the backdrop of a steady stream of complaints from the lessees, concerning poor service, high charges, and poor standard of workmanship. He strongly disputed the suggestion that he had agreed or admitted his service charge liability as a result of his inaction in failing to dispute them.

Ms A Dykes (the Twelfth Applicant)

60. Ms Dykes said she had not been happy with the management service provided by the Respondent ever since they had taken over management in 2010. She had not personally phoned the Respondent to complain, but she had sent emails which had not been answered. She had not been able to find the copies.

61. There had been one occasion in around 2012, when Ms Dykes had not received the service charge invoice as she had been working abroad, when her payment was delayed. She had two reminders and a letter threatening court action within 21 days of that invoice, and that her mortgagee would be informed.

62. On the question of why Ms Dykes did not challenge the service charge, she said that she felt her voice was unlikely to be heard, especially as she had little or no knowledge in the area of service charges. She felt that disputing the charges was not an available option. But she never said that she was happy with the service charges and that she never felt she received the service she was paying for.

The written statements of Mr Latham and Mr Brotherhood

63. Both statements are on a pro-forma questionnaire which had been prepared by Mr McKenzie. This asks:

    a. Have you paid your service charge on time?
    b. Have Gateway carried out their service obligations in the lease?
    c. Have you or any other leaseholder on your behalf contacted Gateway on their failure to meet their obligations under the lease?
    d. What obligations have Gateway failed to carry out?
    e. Have you carried out any maintenance which is the responsibility of Gateway?

64. Mr Latham's statement confirmed that he had paid his service charges on time, that Gateway had not carried out their obligations, that he had raised queries with them but stupidly he had not kept copies, and that his issues were the windows, the gates, fire alarm maintenance, and the cleaning of communal areas.

65. Mr Brotherhood said that he had generally paid service charges on time, though he had missed a couple due to a dispute over charges. He did not believe Gateway had carried out their obligations, and that he had contacted them about this numerous times.

The bundle of documents

66. This bundle contains individual and occasionally collective correspondence between the Applicants and the Respondent's agent. The Tribunal notes:

    a. An email from Mr Brotherhood dated 13 January 2011 complaining about his service charges in which he says:

       "…I've been here nearly 5 yrs now and spent thousands in service charges and for what? … I can't wait til I get this place sold I just feel that we are spending a ridiculous amount of money and have nothing to show for it".

    b. An email later on 13 January 2011 from Mr Brotherhood stating that he would not be paying any more service charge until the window issue is sorted.

    c. A total of about 24 emails from Leanne Sutherland in October 2010, January 2011 and the summer and autumn of 2015 complaining about

the failure to maintain the windows and resolve damp and other problems at the Property. A sample of the frustration apparent in Mrs Sutherland's emails is this comment from an email in September 2015; "…We pay you a lot every month to do work and you do not do a lot from what any of us can see…"

d. A letter dated 2 December 2016 signed by Mrs McKenzie, Leanne Sutherland, Steve Riley, Tom Boden (not a party in these proceedings), Phil Evans, Rob and Jane Sutton, and Jason Latham complaining about the state of the window frames at the Property and the alleged failure of the Respondent to comply with its obligations to maintain the window frames over a period of six and a half years.

The Respondents case on the First Issue

67. The Respondent's case was that all these Applicants had paid service charges without qualification or protest, such that it can be inferred they had admitted or agreed these service charges, and that therefore the Tribunal did not have jurisdiction to consider their applications for a determination in respect of the years 2011 – 2016 pursuant to section 27(A)(4) of the Act.

68. Specifically, in relation to the individual Applicants:

Mr Latham (the First Applicant)

a. The Respondent sent an email to Mr Latham (apartment 1) in January 2015 noting that he was in arrears with his service charge in the sum of £864.15 and he needed to increase his monthly payments. Mr Latham replied on 29 January 2015, saying "I have checked and I had received the email of 12 Nov from you though not read. Else I would of replied and paid the due. I'll get this up to date and adjust the monthly from Feb. I've made a payment already this month."

b. The Respondent said this exchange established that Mr Latham agreed to pay the monthly payments without protest and agreed the service charges which pre-dated his email.

Mr Riley (the Third Applicant)

c. As Mr Riley (apartment 3) only purchased his apartment in August 2013, he had no legitimate interest in the years which pre-dated his ownership.

Mrs Sutherland (the Fifth Applicant)

d. The Respondent drew the Tribunal's attention to a number of email exchanges in which Ms Sutherland had agreed to pay the service charges demanded, including correspondence where she wrote:

i. 13 June 2011 – "with regards to any arrears, it was agreed also that I pay £20 a month on top of the correct monthly amount to start to pay off the arrears".

ii. 2 Oct 2012 – "we agreed that I would pay an extra £20 on top of what I was already paying to pay off a bit more of the arrears".

iii. 14 May 2013 – "as agreed with yourself I have been paying the £200 and whatever pence per month over four months, and then I will do the same for the second part of the year to cover the payment up to the second part of the year…"

iv. 10 August 2013 – (I got my invoice in the post on Thursday for the balance of the service charge from July to December. It is saying to be paid. As you know we agreed to pay over four months at £175.71."

v. 14 February 2014 - I have set up the standing order as per my email the other day."

vi. 14 July 2014 – "As per last I have already set up the standing order … I have also left it at the same amount so glad it's the same."

vii. 1 Sept 2015 – "I will as said continue to pay in two blocks of 4 payments each year and arrange in advance."

viii. 1 Aug 2016 – "I set the payments up at the bank for the second part of the year … I just wanted to let you know that you will be getting it so it will be 4 months from 29 August …"

e. The Respondent's case is that this correspondence establishes that Ms Sutherland has agreed the service charge such that the Tribunal has no jurisdiction to determine it for the years 2011 – 2016.

Discussion and determination

69. As a preliminary point, because this case is not about the Applicants' payments for 2018, (it is about the determination of the amount payable as the final outcome service charge for that year), the Tribunal has not explored whether Mr McKenzie and Mr Lawton's negotiation in January 2018 resulted in a binding agreement that would have affected the amounts charged and paid as the budget service charges claimed for that year (see paragraph 44 above). This issue is not relevant to our determination.

70. On the substantive point in Issue 1, the Tribunal is bound by the Upper Tribunal decisions reviewed above, which require the Tribunal to determine whether on the facts it can be implied or inferred that the Applicants on the First Issue have

agreed or admitted the service charges for the 2011 – 2016 years. The Tribunal must consider the facts of this particular case against the propositions set out in paragraphs 17 and 18 of Cain above. We have noted that the Applicants' are seeking to challenge service charges paid up to 7 years before the applications to the Tribunal were made, in August 2018. This is a fairly substantial period of time. However, it is not as long as in any of the cases reviewed above. In Shersby the claim went back 10 years; in Cain it was 12 years and in Leitner it was 9 years. In Shersby, the Tribunal was also influenced by the failure to take up an earlier opportunity to bring the service charge dispute to the tribunal. What Cain makes clear though, is that the period does not need to be any particular length; it is a question of examining whether there is any evidence to challenge the normal assumption that people do not make payments of sums they dispute. Cain also clarified that the "saving" provision in sub-section (5) of section 27A of the Act is limited. It can only be an absolute protection in relation to a single payment.

71. The Tribunal therefore considers that failure to challenge service charges during the 2011 - 2016 period can be taken as implying or inferring that the service charges were agreed, unless there is some evidence to rebut that assumption.

72. There is however no definition of what "under protest" means. We note that the Applicants here were unadvised and were unaware of the legal option available to them of making payment under a form of words that would have protected their right to challenge their service charges. We have to make a determination on whether for the period 2011 - 2016 the Applicants were genuinely of the view that their service charges were not agreed even though they had been paid.

73. We are therefore of the view that if there is evidence that the Applicants' were unhappy with the way in which the Respondent was administering the service charge regime, and had communicated that dissatisfaction in some way to the Respondent, that would suffice to rebut the prima facie proposition that they had agreed or admitted the payability of their service charges.

74. At this point, we need to analyse the nature of the service charge demands that were levied in the 2011 – 2016 years and consider whether, if they were simply demands for an advance payment against an annual budget, section 27A(4)(a) bites to remove the Tribunal's jurisdiction to consider a challenge to those invoices on the basis that the Applicants agreed or admitted those advance payments. This is the point raised in the *Warrior Quay* case referred to above.

75. We have decided that it is not right to pursue this point. The reason is that the wording of section 27A(4)(a) itself says that no application can be made for a determination of a service charge under subsection (1) **or (3)** of the section in respect of a matter which has been agreed or admitted by the tenant. Subsection (3) is the subsection that deals with challenges to service charges that are anticipated to be incurred in the future. In our view, the general prohibition on making an application for determination of a service charge if that charge has been agreed or admitted applies to advance payments as well as final accounts.

76. We therefore now need to consider whether the Applicants should be found to have agreed or admitted that the service charges demanded for 2011 – 2016 were due.

77. We are unconvinced that any of the emails or communications by lessees to the Respondent as set out in paragraph 68 above can be construed as agreements or admissions to pay the service charge. We think that a distinction has to be made between arrangements for the mechanics of payment and acceptance of the principle of payability. We see nothing in any of the factual exchanges referred to by the Respondent that would allow us to imply or infer that the Applicants' concerned had agreed that the overall service charge (whether budgeted or actual) was payable. We think the exchanges merely show that the Applicants accepted that something was or would be payable (rather than the actual amount), and they were simply making arrangements to pay something.

78. We find that Leanne Sutherland had from 2010 onwards, and quite vociferously, objected to the Respondent's service charges, particularly because of the way in which the Respondent had dealt with the window redecoration. There is no basis upon which we can find that she should by implication or inference be considered to have agreed or admitted the service charges levied upon her throughout the period 2011 – 2016.

79. Likewise, we find that Mr Brotherhood had been challenging the adequacy of the service being provided by the Respondent since 2011 and had maintained that challenge. We cannot find any basis for implying or inferring that he had agreed or admitted his service charges bearing in mind his challenges.

80. We have carefully considered the letter dated 2 December 2016 referred to in paragraph 66d above. Consistent with our approach that evidence which shows the Applicants had communicated their dissatisfaction with the service charges being levied in some for in respect of the period 2011 – 2016, we find that this letter evidences that Mr Riley, Mr Evans, Mr & Mrs Sutton, and Mr Latham, as signatories of that letter had raised a dispute about the service charge going back to 2011 and they cannot be considered to have agreed or admitted that their service charges were payable for that period.

81. Mr Beale did not buy his apartment in the Property until June 2015. For the Tribunal to determine that it has no jurisdiction to consider his liability to pay service charges for the remainder of that year and for 2016 on the basis that he had agreed or admitted the service charges would require us to be convinced that he had, by implication or inference, admitted the service charges were due. Mere payment for one year (at least) is not to be taken as such an admission. Consistent with the Cain decision, rather more is required. Lack of challenge over a long period of time is the general route suggested by the cases. In the Tribunal's view, that route is not available in Mr Beale's case as the period of time between the

incurring of the service charges and their challenge is not long enough for the Tribunal to imply or infer that the charges have been agreed.

82. In the case of Mr & Mrs Stokes, the Tribunal has no evidence from them. They sold their apartment in 2015. To the best of the Tribunal's knowledge, they raised no express objections to the service charge demands which they paid for the period 2011 to the sale of their apartment. They then delayed until 2019 until they applied to join these proceedings. As the Tribunal outlined in paragraph 70, failure to challenge a service charge invoice over a long period of time is likely to be considered as implying or inferring that the charge is agreed. Without being provided with any basis for determining differently, we cannot see that Mr & Mrs Stokes challenge can be sustained. We determine that we have no jurisdiction to consider their challenge to the service charge demands levied upon them for the years 2011 – 2015.

83. With a certain amount of regret, because we have been told that she is both elderly and stressed by this case, we have to take the same line in respect of Mrs Goffin. There is nothing before the Tribunal from her upon which we can determine that the assumption in Cain that people do not pay their bills unless they agree they are due, can be set aside. We determine that we have no jurisdiction to consider Mrs Goffin's challenge to the service charge demands levied upon her for the years 2011 – 2016.

84. Mr & Mrs Jones and Ms Dykes both told the Tribunal that they were unhappy with the Respondent's operation of the service charge during the years in question. But Ms Dykes confirmed that she never raised her concerns with the Respondent, and Mr Jones said he thought he had but could not recall when or provide any evidence to corroborate or support this statement. The Tribunal's task is to decide, on the evidence before it, whether the fact that both Mr & Mrs Jones and Ms Dykes had paid their service charges for 2011 – 2016 should be treated as implying or inferring that they agreed those charges, as people generally do not pay bills they disagree with. In the absence of any contemporaneous challenge to those bills, the Tribunal cannot do other than determine that we have no jurisdiction to consider Mr & Mrs Jones, and Ms Dykes challenge to their service charges for the years 2011 – 2016.

85. Our determination on the First Issue is:

    a. The service charges payable by Mr Latham (the 1st Applicant), Mr Riley (the 3rd Applicant), Mr Brotherhood (the 4th Applicant), Ms Sutherland (the 5th Applicant), Mr Beale (the 6th Applicant), Mr & Mrs Sutton (the 9th Applicant) and Mr Evans (the 11th Applicant) for the service charge years 2011 – 2016 (or such proportionate part of those years that each Applicant was the owner of his or her apartment) are:

        2011 - £881.09
        2012 - £780.75

2013 - £849.85
2014 - £743.43
2015 - £702.88
2016 - £1,161.20

b. The Tribunal has no jurisdiction to determine the applications of Mrs Goffin (the 7th Applicant), Mr Jones (the 10th Applicant), Ms Dykes (the 12 the Applicant) and Mr & Mrs Stokes (the 12th Applicant) as these applicants have agreed or admitted the service charges for 2011 – 2016.

Consideration of the Second Issue

86. In relation to the service charge years 2017 – 2019, all Applicants except Mr & Mrs Stokes have an interest in the issue. The argument raised by the Respondent in relation to whether payment of service charges for 2011 – 2016 have been agreed or admitted has not been raised in respect of 2017 – 2019.

87. The Tribunal's task in determining the Second Issue is to apply the legislative provisions contained in the Act to the service charges which have been demanded from the Applicants. A summary of those provisions, together with identification of the basis upon which the service charges can be legally demanded under the leases that the Applicants hold is necessary. As the parties are familiar with the 2017 Decision, and the background law and lease terms were not in dispute, these are covered only briefly.

The challenges to the 2017 – 2019 service charges

88. This table shows the final accounts position for 2017 and 2018, and the budget proposal for 2019:

Expenditure	2017 accounts	2018 accounts	2019 budget
Communal Parts Maintenance	£	£	£
Cleaning	1,560	1,560	1,440
Window cleaning	540	660	720
Electricity	924	4027	900
Gate maintenance	711	238	800
Gardening	192	216	432
Out of hours service	288	288	288
Repairs and maintenance	-	318	400
Insurance			
Valuation	300	-	
Building insurance	2,543	2,692	2,850
Other expenditure			
Repairs and renewals	1,644	-	800

Health & Safety	684	-	685
Fire alarm	1,560	384	800
Management fees	4,406	4,803	5,091
Accountancy fees	720	738	585
Bank charges	72	72	96
Postage	72	72	72
Legal expenses		4,120	-
Reserve fund contribution	-	-	1,000
Total	16,216	20,189	16,959
Total per apartment	1,351.33	1,682.42	1,413.25

89. At the hearing on 21 and 22 May 2019, the only source of actual figures for the 2018 year were the management accounts for that year. By the reconvened hearing on 31 July, final accounts for 2018 had been provided by the Respondent. This decision uses the accounts out-turn for that year.

90. Mr McKenzie raised his objections to these charges by category rather than by year. Under each category he explained his objections, which were responded to by Mrs Coleman and/or by Mr Edwards, the Respondent's manager of the Property. This determination will follow Mr McKenzie's category-based approach.

Communal parts maintenance - Cleaning

91. Mr Edwards said the cleaning charges were based on a contractual arrangement with H & S Industrial Services to attend every fortnight for a clean of the common parts taking two hours in total, split between two operatives, for which the Respondent is charged £25 plus VAT per block per fortnight, equating to £1,560 per annum.

92. Mr McKenzie challenged the cleaning costs on two bases. Firstly, he said that the cleaners did not spend two hours at the Property. Secondly, he said that the rate was excessive.

93. Witness statements were provided from Mr & Mrs Sutton, Mr Evans, Mr Beale and Mrs Sutherland stating that they had "measured" the attendance time of the cleaners and there were usually two cleaners who spent no more than 10 to 15 minutes each on site. The witness statement did not give the dates or the frequency of the observations. The statement was dated 10 March 2019 and was said to be updated on 1 May 2019.

94. A comparative quote from a company called Sanders Cleaning Ltd was provided by Mr McKenzie indicating a cost per hour per operative of £12.50.

95. The 2017 Decision allowed cleaning costs for 2016 of £1, 296. The Respondent indicated it would be willing to accept a compromise figure of £1,350 for 2017 – 2019, on the basis of some allowance for the rise in costs since 2016.

96. The Tribunal's was not persuaded that for 2017 and 2018, the evidence offered about the time spent on site by H & S was sufficient to allow us to reduce the cleaning costs on the basis that only 10 or 15 minutes was being spent cleaning at each visit. If the Applicants intend to continue to monitor the cleaner's attendance, they will need a contemporaneous written record of the date of observation, the name of the observer, the times recorded for arrival and departure, and the nature and location of the work done. It would be sensible for the Respondent to arrange for the attendance sheet at the Property to record arrival and departure times, and to require the signature of the cleaning operative.

97. The Tribunal is persuaded that its conclusions in the 2017 Decision to the effect that the cost rate for cleaning work was too high still have validity. However, market rates do move. The Tribunal determines that the reasonable cost incurred for cleaning in 2017 and 2018 was £1,350, as was accepted by the Respondent. As the Respondent also accepted that would be a reasonable figure for anticipated expenditure in 2019, the Tribunal adopts the same figure for that year.

98. At the hearing, an issue was raised concerning the cost of travel time by cleaning operatives. It was unclear whether H & S Industrial were including travel time within their charges. To assist the parties, the Tribunal comments that it would normally expect transparency in the contractual arrangement concerning cost of travel. If there is to be a contractual charge for the cost of travel time, that should be set out in the contract. If that travel time cost resulted in the cost of cleaning being uncompetitive, a manager would normally be expected to test the market to see if better terms were available in order to arrive at a fee which would be "reasonably incurred".

Communal parts maintenance - Window cleaning

99. This item was agreed at the amounts claimed by the Respondent – i.e. £540 for 2017, £660 for 2018, and a budget figure of £720 for 2019.

Communal parts maintenance - Electricity

100. The parties are referred to the 2017 Decision in which a detailed analysis of the electricity charges for 2011 – 2016 was carried out which, in a nutshell, established that the recording of electricity consumption in each year was the key to a proper calculation of the cost of electricity at the Property.

101. Mr Edwards informed the Tribunal that since that decision, further investigations had revealed the likelihood that in Block 1, the supply being billed

to the Respondent for inclusion within the service charge is in fact the supply to Flat 8. He believes there is another meter for which no bill has ever been received.

102. The parties both indicated their acceptance that until the basis of the electricity charges was established, the appropriate course was to charge an annual sum of £750 to the service charge account for 2017 and 2018 and as a budget allowance for 2019. The Tribunal adopts that suggestion.

Communal parts maintenance - Gate maintenance

103. The charge for 2017 was £711.36. This comprised three invoices:

    a. £76.20 for a gate service charged by an invoice dated 12 April 2017;

    b. £572.82 for a repair charged by invoice dated 16 May 2017;

    c. £62.34 for two call out charges on 15 and 20 Dec 2017 in which no fault was found.

104. The charge for 2018 was £239. This is for:

    a. A maintenance call-out on 27 December 2017 (the invoice is dated 4 January 2018) at a cost of £94.78;

    b. A repair in November 2018 at a cost of £144.00.

105. Avid readers will spot that there were three visits to the Property on respectively 15, 20 and 27 December 2017. In fact, there was a fourth, in the early hours of the morning on 24 December 2017, initiated by a resident via the emergency call out facility available to them. The total cost of this visit was £1,009.20. It is charged in the service charge accounts under repairs and renewals and will be considered under that heading later in this decision, but it forms part of the story here so is mentioned for completeness.

106. Additionally, for the parties' benefit, the invoices provided in support of the gate maintenance charges included a charge of £25.00 being court costs incurred by Five Counties Automation Ltd as a result of failure by the Respondent to pay the invoice listed at paragraph 103(c) above. The Respondent accepted that this charge should not have been included in the service charge accounts at all.

107. Mr McKenzie's challenge to the remaining gate maintenance charges was essentially to the competence of the Respondent in failing to organise a maintenance contract for the gates which he said would have resulted in regular maintenance, thus avoiding call outs for faults. The May 2017 charge was, he said, to put the gates into working order before the Tribunal's site visit in 2017 and was for the purpose of making the Respondent look better.

108. Mr McKenzie provided documentary evidence showing a series of complaints during the summer of 2018 to the effect that the gates required attention, and a series of responses from the Respondent indicating that they were not able to find a suitable gate maintenance contractor, and that there were no funds available for a repair to be authorised. This was of great concern to the lessees as due to the state of the gates at that time, they were left permanently open, exposing the Property to risk of vandalism and safety concerns for the residents. He said that eventually the lessees took the matter into their own hands and engaged their own contractor to carry out a gate repair at a cost of £80. It was only at this point that the Respondent then sent a contractor in November 2018 to carry out a repair.

109. There was no objection from Mr McKenzie to the first invoices listed above in each of 2017 and 2018 (i.e. to those at 103(a) and 104(a) above). He also did not challenge the quantum of the invoices; only whether they should have been incurred. Mr Edwards informed the Tribunal that the Respondent would not charge for the November 2018 call out. The 2018 charge is therefore agreed, as Mr McKenzie did not challenge the first invoice and the Respondent agreed not to charge for the second.

110. The issues for the Tribunal are therefore whether to allow the 2017 charges listed at paragraph 103(b) and (c). There is no issue as to whether these charges were incurred; the question is whether they were reasonably incurred such that the Applicants have to pay them. We cannot see a reason to disallow these charges. The work was done, and it is reasonable for the Respondent to arrange for repairs when faults are noted and it was the Respondents case, which we accept, that the faults were communicated to the Respondent with a request for them to be repaired. We also note that despite there apparently being a visit on 15 December 2017, no charge has been levied for that visit. The charge at paragraph 103(c) is for a repair to a faulty leaf on 20 December 2017.

111. The Tribunal determines that the charge for gate maintenance for 2017 is £711.36 and for 2018 is £94.78. The Respondent has proposed a budgeted sum for 2019 of £800 which the Tribunal approves. It will be necessary for the Respondent to establish that any expenditure of that budgeted sum during that year is reasonably incurred to avoid a further challenge to the outcome service charge for that year.

Communal parts maintenance - Gardening

112. For 2017 the Respondent contracted H & S Industrial Cleaning Services to provide a gardening service delivered in five visits in 2017. Four of the visits were charged at £30 plus VAT. The fifth was charged at £40 plus VAT. The total cost was therefore £192.00.

113. For 2018, there were six visits, each charged at £30 plus VAT, totalling £216.

114. Mr McKenzie challenged the rate of payment. There was no challenge to the principle of engaging a gardener. He suggested the rate charge was an hourly rate and that the hourly charge was excessive for the area. He referred to the 2017 Decision where £20 an hour had been allowed for gardening and proposed a reduction of one third on the charges for 2017 and 2018.

115. Mr Edwards did not think that the charge per visit was for one hour of work. He said it was a fixed charge to carry out the work needed which might take up to an hour and a half per visit, so there was not merit in Mr McKenzie's proposition.

116. The Tribunal's determination is that the obvious interpretation of the invoices presented, which referred to a unit quantity and a price per unit, is that the charge was based on an hourly rate and not a fixed price. The principles set out in the 2017 Decision still applied in relation to gardening, but to take account of inflation and general cost rises, a reasonable market rate for gardening services would be the sum of £22 per hour plus VAT. We therefore determine that the service charge for gardening services allowable for 2017 is £132.00 (5 hours @£22 plus VAT) and for 2018 is £158.40 (6 visits @ £22 plus VAT). We determine that the budget figure for 2019 should be same as for 2018, namely £158.40.

Communal parts maintenance - Out of hours service

117. This is an emergency service provided by the Respondent to help tenants obtain emergency help. Mrs Coleman explained that it is a call centre service provided by a specialist company called Adivo, which is backed up by the Respondents own staff. The cost is £288 per annum for the Property. Part of this cost is external cost payable to Adivo, and part is Gateway internal cost. She was not able to identify the cost split. She said the service cost equated to £2 per unit per month.

118. Mr McKenzie said that the service was not wanted by the Applicants. He believed that in a meeting with a Mr Lawton from the Respondent following the 2017 Decision, it had been agreed that the Applicants would not be charged an out of hours service cost.

119. The Tribunal's view is that it is entirely reasonable for a management company to offer an out of hours emergency call service as part of its management offering. We consider that the cost is within the reasonable range of this type of service, and we therefore allow the cost of £288 as a service charge cost for 2017 and 2018 and as a budgeted cost for 2019.

120. There is insufficient evidence for us to find there was a binding agreement between Mr Lawton and Mr McKenzie to remove this service. However, Mrs Coleman indicated at the hearing that if the Applicants clearly indicated that they did not want this service, the cost could be removed for the future. Should there be any dispute about the actual or budgeted cost of this service in future service charge years, it would be sensible for the lessees to write a clear letter to the

Respondent indicating whether they wish to have the benefit of this service within their service charge for the future.

Communal parts maintenance – Repairs and Maintenance / Other expenditure – Repairs and Renewals

121. Repairs, renewals and maintenance appear in different lines in the accounts, but it is most convenient to consider them together. The charge in the accounts for 2017 is £1,644. The charge for 2018 is £318, which Mr McKenzie agreed. The budget for 2019 is £1,200 comprising of an allocation of £400 under communal parts maintenance and £800 under other expenditure.

122. The Tribunal has to resolve the 2017 charge and the budget figure.

123. The 2017 charge of £1,644 included only two invoices which were disputed by Mr McKenzie, being an invoice dated 14 July 2017 for £258 and an invoice dated 14 August 2017 for £194.40. The Tribunal heard detailed representations from Mr McKenzie objecting to elements of the work charged for in these invoices, leading him to propose a one third reduction in each invoice. Mrs Coleman accepted that proposal. The 14 July 2017 invoice is therefore allowed at £172 (so reduced by £86.00), and the 14 August invoice is allowed at £129.60 (so reduced by £64.80).

124. The 2017 accounts also include the invoice for £1,009.20 for the emergency call out to repair the gates on 24 December 2017 which we have already referred to above under the heading "gate maintenance". Mr McKenzie challenged the payability of that invoice as being unreasonable in amount.

125. Our determination is that this invoice is payable in principle. It certainly seems to the tribunal that it is an extremely large amount of money for a repair that took a relatively short time to complete with the operatives only spending one hour on site. The problem for all parties is that the call out was initiated by a resident in the early hours in the morning of Christmas Eve. Quite why the resident felt there was such an urgency that a contractor was required then is unexplained. But the evidence is that the call was made, and it would be unreasonable, in the Tribunals view, for this to be irrecoverable by the Respondent, as the cost was undoubtedly incurred. We cannot accept Mr McKenzie's criticism of the use of a firm based in Yorkshire as it seems clear the operative was much closer. Only 60 miles travel have been claimed for travelling for a time of 1.25 hours per journey.

126. However, the invoice shows a clear error in the calculation of the charge, in that 4.5 hours' time have been charged when it is clear that 3.5 hours of time had been spent. We therefore only allow 7/9ths of the labour charge for this invoice to £546 from £702. The other elements of the invoice are payable, being a call out charge of £85 and mileage of £54, totalling £685 plus VAT – a sum of £822.00 (so a reduction of £187.20).

127. The 2017 service charge for repairs and renewals is therefore allowed at £1,306.00, which is the claimed sum of £1,644 less the reductions made above of £338.00.

Valuation

128. The Respondent incurred expenditure of £300 in 2017 for a valuation. Mr McKenzie accepted this charge. There is no charge in the 2018 accounts and there is no budgeted provision for a valuation in 2019.

Building insurance

129. The service charge for this item is £2,543 for 2017, £2,692 for 2018 and the budgeted figure for 2019 is £2,850.

130. Mrs Coleman explained to the Tribunal that the Respondent has a block policy with AXA. She said it was market tested every year on 1 July. She said the Respondent is not obliged to obtain the cheapest insurance and no comparables had been produced by Mr McKenzie. Unfortunately, the Respondent did not produce any documentary evidence to support the premiums charged under the service charge or to show the extent of the market testing that had been undertaken.

131. Mr McKenzie's position is that the 2017 Decision determined that there was a significant overcharge for insurance in the 2011 – 2016 service charge years. He considered that the Tribunal should apply the same principles to its decision on the quantum of a reasonable insurance premium for 2017 – 2019 that it had for 2011 – 2016.

132. The Tribunal does consider that the evidence provided to justify the insurance charges levied in the 2017 and 2018 years is unsatisfactory. The task of the Respondent is to justify the service charges it levies once a prima facie case is raised. Bearing in mind the 2017 Decision, our view is that there is a prima facie case to query whether the insurance premium charged for the years under consideration is reasonably incurred, and the Respondent has failed to convince us that a substantial increase in insurance premiums is justified. We consider that the approach to this issue in the 2017 Decision still has validity, and we therefore intend to follow the approach taken then by that decision plus a 5-6% increase to take account of changes in the insurance market. We therefore allow £1,780 for 2017, £1,880 for 2018, and a budget figure of £2,000 for 2019.

Other expenditure – Health and Safety

133. The Respondent commissioned a health and safety report in 2017 at a cost of £684 and planned another report in 2019 at a budgeted cost of £685. In fact, that 2019 report was prepared on 28 February 2019 and was produced to the Tribunal.

134. Mr McKenzie challenged the expenditure. His main point was that the reports were carried out by an associated party to the Respondent and did not result in any action. He also expressed doubt that they resulted from any actual inspection of the Property.

135. The Tribunal finds that the 2017 was carried out by an associate of the Respondent, the contractor Associated Surveying Ltd having a common director with the Respondent. This in itself is not objectionable as long as the fee is reasonably incurred, and the report is up to standard. It is pretty much an imperative that a professional management company will need to commission health and safety reports from time to time.

136. The Tribunal takes the view that the findings in the 2017 report did not result in pro-active management of the health and safety risks identified. Our view is that this is more properly an issue that will impact upon the management fee than the cost of the health and safety report.

137. We see no basis for finding that the reports in 2017 and 2019 were not prepared, nor that they were not up to standard. We do consider that the fee is excessive. We allow a fee of £500 plus VAT (£600) for 2017 and for the budget in 2019.

Fire alarm

138. The 2017 accounts charge for fire alarm systems maintenance was £1,560. The accounts charge for 2018 was £384. The main reason for the increased amount in 2017 was that the Respondent's contractors identified a faulty fire alarm panel and three faulty smoke detectors, resulting in a cost for replacement parts of £834 plus VAT.

139. The challenge to this expenditure was two-fold; Mr McKenzie had found a cheaper fire alarm panel on the internet for £367, including new smoke detectors, so he said that the price was too high. In relation to the 2018 charge, Mr McKenzie said that the charge was for two maintenance visits during the year, where only one was necessary.

140. Mrs Coleman pointed out that it was always possible to find cheaper prices on the internet, but account should be taken of the need to verify quality and availability. On the question of how many service visits should be undertaken each year, she said that the Respondent had taken advice from their contractor on this point and had been advised that two visits each year should be undertaken.

141. The Tribunal finds that the charges for both 2017 and 2018 are reasonable. A commercial contractor was engaged to advise on the fire alarm system, and its advice and recommendations were accepted. It is requiring too much of a management company to constantly second guess a reputable and specialist

contractor's recommendations and prices, though of course they need to be sense checked and market tested regularly. It was reasonable for the Respondent to engage a professional contractor and follow its recommendations. We allow the charges as set out in the accounts.

142. The 2019 budget provision for fire alarm maintenance is £800. We consider this is too high. The likely expenditure is two maintenance visits, and we consider it would be reasonable to allow a contingency above the likely cost of those two maintenance visits (which should not be much higher than the 2018 charge), because of the possibility of parts failure. But we consider that £600 would be a reasonable budget figure, which is what we allow for the 2019 budget.

Management fees

143. The Respondent's management fee for 2017 equates to £367.16 per apartment per annum, and for 2018 equates to £400.25. The proposed budget for 2019 equates to £424.25 per apartment per annum.

144. Mr McKenzie asked for the fee to based on £175 per apartment, as per the 2017 Decision, but then reduced to around £80 per apartment because of the unsatisfactory cleaning arrangements, failure to attend to gate maintenance, the poor appearance of the Property, failure to resolve the communal electricity charges, and failure to manage the communal lighting arrangements, in that the lights were still on during daylight hours.

145. Mr Edwards said there was considerable administration and a need to carry out visits to justify the management cost. He pointed out that there were only 12 units, so economies of scale were difficult to achieve. Mrs Coleman said a fee of £80 per apartment would simply make the management service untenable. She pointed out that no comparative quotations had been provided by the Applicants.

146. The Tribunal sees no good reason to depart from the approach taken in the 2017 Decision, when, even though there were identified deficiencies in the management service, the Tribunal had determined that £175 per apartment per annum was a reasonable fee. We see no justification yet for an increase, whether arising from inflation or due to competitive forces, and we are persuaded that there is some merit in Mr McKenzie's continued criticism of the Manager's performance in 2017 and 2018. We therefore allow the total sum of £2,520 (i.e. £175 plus VAT per apartment per annum) per annum for 2017 and 2018 and the same sum as the budget cost for 2019.

Accountancy fees

147. The parties agreed these fees at the hearing, and they are allowed as £600 for 2017, £618 for 2018, and £638 for the budget for 2019.

Bank charges and postage

148. These charges were also agreed as per the accounts / budget, and are therefore allowed at £144 for 2017 and 2018 and at £168 as the budget figure for 2019.

Legals

149. In 2018, the Respondent charged £4,120 for legal services through the service charge. This was made up of:

	£
1. Fee for appeal to upper tribunal	220.00
2. Court fee for unpaid invoice	25.00
3. Solicitors costs on account for appeal	900.00
4. Further court fee for appeal	275.00
5. Second solicitor's costs for appeal on account	900.00
6. 6 x charges for costs due to unpaid bill @ £300	1,800.00
	4,120.00

150. Mrs Coleman conceded that charge number 2 was the court fee referred to above in the discussion on gate maintenance charges, and it was incorrectly included in the service charge accounts.

151. There was only one external invoice in support of the solicitor's costs at items 2 and 5. The second charge was invoiced internally by the Manager to the Respondent and its narrative indicated that it related to the proceedings before this Tribunal in 2017, in respect of which a section 20C order had been made preventing recovery of those costs through the service charge. It is therefore disallowed.

152. Mrs Coleman explained that if a lessee did not pay a service charge, the Manager's practice was to charge a fee of £30 for sending a chasing letter, and if that was not successful, to charge the lessee £300 (as an internal charge – not involving external costs). If that was not paid, these costs were passed through the service charge. She conceded that she was not able to say which lessees had not paid the six charges levied and unable to explain why the Respondent should include within the service charge a fee it was collecting outside of it. She therefore agreed not to pursue the cumulative charges under item 6 above.

153. The Tribunal agrees that the two court fees at items 1 and 4, and the external legal costs at item 3 (which includes VAT) are properly due within the service charge for 2018. The amount allowed is therefore £1,395.00. The parties are reminded that Mr Greenfield has the benefit of a section 20C order in relation to the upper tribunal costs, and this charge will therefore need to be apportioned between the remaining eleven Applicants.

Reserve fund contribution

154. The Respondent has included a reserve fund contribution in the 2019 budget of £1,000. This is a sensible and prudent reserve to build up resources to address major costs in the future and the Tribunal approves it.

Summary outcome of service charge determination in respect of 2017, 2018, and 2019 (budget).

155. To assist, the following table summarises the decisions taken in this part of the decision.

Expenditure	2017 accounts	*2017 Tribunal decision*	2018 accounts	*2018 Tribunal decision*	2019 budget	*2019 Tribunal decision*
Communal Parts Maintenance	£	*£*	£	*£*	£	*£*
Cleaning	1,560	*1,350*	1,560	*1,350*	1,440	*1,350*
Window cleaning	540	*540*	660	*660*	720	*720*
Electricity	924	*750*	4027	*750*	900	*750*
Gate maintenance	711	*711.36*	238	*94.78*	800	*800*
Gardening	192	*132.00*	216	*158.40*	432	*158.40*
Out of hours service	288	*288*	288	*288*	288	*288*
Repairs and maintenance	-	-	318	*318*	400	
Insurance						
Valuation	300	*300*	-	-	-	-
Building insurance	2,543	*1,780*	2,692	*1,880*	2,850	*2,000*
Other expenditure						
Repairs and renewals	1,644	*1,306.00*	-	-	800	
Health & Safety	684	*600*	-	-	685	*600*
Fire alarm	1,560	*1,560*	384	*384*	800	*600*
Management fees	4,406	*2,520*	4,803	*2,520*	5,091	*2,520*
Accountancy fees	720	*600*	738	*618*	585	*638*
Bank charges	72	*72*	72	*72*	96	*96*
Postage	72	*72*	72	*72*	72	*72*
Legal expenses	-	-	4,120	*1,395*	-	-
Reserve fund contribution	-	-	-	-	1,000	*1,000*
Total	16,216	*12,581.00*	20,189	*10,560.18*	16,959	*11,592.24*
Total per apartment	1,351.33	*1048.45*	1,682.42	*888.76*	1,413.25	*966.03*

Mr Greenfield				*763.76*		

Summary of our decisions on the First and Second Issues

156. From the 2017 Decision, and from our determination above, the service charge determined to be payable for each of the service charge years identified is:

		£
2011	-	881.09
2012	-	780.75
2013	-	849.85
2014	-	743.43
2015	-	702.88
2016	-	1161.20
2017	-	1048.45
2018	-	888.76 (Mr Greenfield £763.76)
2019	-	966.03 (budget)

157. The amounts that all Applicants (for the period they owned their apartments) were charged by way of interim service charge were:

	£
2011	1,086.68
2012	1,146.08
2013	1,157.76
2014	1,238.18
2015	1,284.26
2016	1,284.84
2017	1,288.92
2018	1,341.00
2019	1,413.26

158. In respect of the years they have owned their apartments, Mr Latham, Mr Riley, Mr Brotherhood, Mrs Sutherland, Mr Beale, Mr & Mrs Sutton, and Mr Evans are entitled to a credit on their service charge accounts of the difference between the amounts charged as set out in paragraph 157 above and the sums determined to be reasonable service charges in paragraph 156. Mrs McKenzie and Mr Greenfield should have already had the benefit of that credit by virtue of the 2017 Decision.

159. Mrs Goffin, Mr Jones, and Ms Dykes are entitled to a credit on their service charge accounts for 2017 – 2019 service charge years of the difference between their charge as per paragraph 156 and their payment as per paragraph 157.

160. Mr & Mrs Stokes are not entitled to any credit. The Tribunal has no jurisdiction to determine their claim.

161. Mr Greenfield's liability for the 2018 service charge year is £763.76, not £888.76, so he is entitled to a larger credit for that year.

Administration charges

162. Mr McKenzie has drawn our attention to the imposition of charges upon some Applicants arising from their alleged failure to pay their service charge demands. We have been told that a total of nine Applicants have had charges imposed on them, ranging from £30 for a chasing letter if payment of a service charge demand was late, up to £300 for what are described as "pre-action legal expenses". Mr McKenzie has asked:

> "I request that these "fines" for late payment and pre action legals are considered as part of the service charge and request that they are withdrawn for each leaseholder."

163. The application we are considering is for a determination of the service charges payable. It is made under section 27A of the Act. We are of the view that these charges for late payment are administration charges within the definition contained in Schedule 11 of the 2002 Act, not service charge items. There is a separate application form asking the Tribunal to consider the payability of administration charges. We note that the charges have been applied to the individual Applicant's account. Most of the charges have been paid by the individual Applicant.

164. We therefore decline to make a determination in relation to these charges as they are not within the scope of the applications before us.

Window repair and decoration

165. Mr McKenzie asked the Tribunal to order that the Respondent proceed with the window repairs. We have no jurisdiction to make an order to that effect; we are limited to determining the payability of a service charge. The Applicants will need to pursue this through the courts. They should consider taking legal advice on this option.

Costs

166. Proceedings before the Property Tribunal do not normally result in an award of costs against other parties. A costs order however may be made under the tribunal's rules if a party has behaved unreasonably in the conduct of the proceedings (Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). There is no application by either party for such a costs order in this case. It is common for a landlord also to claim its costs of tribunal proceedings via the contractual commitments made in the lease allowing it to do so. However, there are statutory provisions which allow the tribunal to make orders restricting those costs. These are:

a. Section 20C of the Act. This provides that the Tribunal may determine that "any … costs … 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 …". The Tribunal may make "such order … as it considers just and equitable in the circumstances".

b. Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). This provision allows the Tribunal to make an order reducing or extinguishing the tenant's liability to pay an administration charge in respect of litigation costs. It applies where the landlord seeks to recover its costs of litigation directly from a tenant via a specific direct covenant by a tenant to the landlord, as opposed to through the service charge. The Tribunal, again, can make whatever order "it considers to be just and reasonable".

167. To a large extent, this decision might be considered to be the second instalment of the 2017 Decision, in which the Tribunal granted a section 20C application to the Applicants, which was extended by the Upper Tribunal to an award under section 20C to all the lessees (in respect of the first-tier tribunal decision). In this decision, in many respects the approach and the reasoning in the 2017 Decision has simply been applied to the later years now under consideration. A significant reduction in the annual service charges for 2017 and 2018, and in the budget for 2019, has been secured. Some of the Applicants have also secured significant reductions in their service charges for 2011 – 2016. The Tribunal does not consider that it would be just and equitable for the Applicants to have to pay the Respondents costs for securing this determination, whether they are sought via the service charge or via any other covenant, as they have broadly been successful in these applications.

168. We therefore make an order under section 20C of the Act that none of the Respondents costs of these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. We also make an order under para 5A of Schedule 11 of the 2002 Act that the Applicants' liability to pay any litigation costs incurred or to be incurred by the Respondent in connection with these proceedings is extinguished.

Appeal

169. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall

First-tier Tribunal (Property Chamber)