



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

Case Reference : **CAM/34UF/LSC/2019/0007**

Property : **47a Merthyr Road, Northampton**

Applicant : **Ms Mojisola Sarat Tina Eletu**

Respondent : **Northampton Borough Council**
Manager : **Northampton Partnership Homes**
Representative : **Mr Alexander Pritchard-Jones of Counsel**

Date of Application : **26th March 2019**

Type of Application : **To determine the reasonableness and
payability of the Service Charges (section
27A Landlord and tenant Act 1985)**

Date of Application : **4th July 2019**

Type of Application : **To determine whether an order should be
made under section 20C of the Landlord
and Tenant Act 1985 for the limitation of
service charge arising from the landlord's
costs of proceedings**

Date of Hearing : **26th June 2019**

Tribunal : **Judge J R Morris**
Mr G F Smith MRICS FAAV REV

Date of Decision : **16th August 2019**

DECISION

Decision:

Issue 1

1. The Tribunal determined that the reasonable Service Charge payable by the Applicant to the Respondent for the years in issue is as follows:
£277.66 for the year ending 31st March 2012
£264.55 for the year ending 31st March 2013
£617.17 for the year ending 31st March 2014
£420.75 for the year ending 31st March 2015
£223.99 for the year ending 31st March 2016
£272.11 for the year ending 31st March 2017
£449.62 for the year ending 31st March 2018

Issue 2

2. The Tribunal is not able to deal with alleged breaches of lease with regard to this application and as no charge had been made for such work no determination as to reasonableness could be made.

Issue 3

3. The Tribunal finds that the Applicant had not been credited with the adjustments which should have been credited to her account following the previous decision reference number CAM/34UF/LSC/2012/0035 dated 31st August 2012, hereinafter referred to as the Previous Tribunal Decision. The Tribunal therefore finds that the Applicant's service charge account is in credit by the sum of £590.40.

Issue 4 - Application under Section 20C

4. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant to the Respondent.

Reasons

Application

5. This Application was made on 26th March 2019 for a Leasehold Valuation Tribunal to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of the reasonableness and liability to pay service charges.
6. The Applicant also made an application on June 2019 following the hearing for a determination under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings

Issues

7. Direction were issued on 15th April 2019 and the issues identified are as follows:

Issue 1

8. The reasonableness and payability of the service charges incurred for the years ending 31st March 2012, 2013, 2014, 2015, 2016, 2017 and 2018.

Issue 2

9. The Applicant also claims that the Respondent is in breach of the lease due to their failure to repair a shared fence, footway and gate and due to their failure to allow the Applicant quiet enjoyment of her property.

Issue 3

10. The Applicant claims that the Respondent has failed either to credit the Applicant with her contribution to the Reserve Fund, which had been distributed to the Tenants, or the adjustments which should have been credited to her account following the Previous Tribunal Decision.
11. The Tribunal notes from the Previous Tribunal Decision (copy included in the bundle), that for the years ending 31st March 2007, 2008, 2009, 2010 and 2011 the Tenants were charged the estimated costs which happened to be more than the actual costs. The difference was not reimbursed but put into a reserve fund. The Respondent appreciated that this was not in accordance with the lease. A contribution to the reserve fund should have been based on a genuine pre-estimation of major future expenditure and not an overestimation of the service charge. The Respondent's reasons were understandable in that it was trying to ensure that there were funds available for major repairs. It was also having to reorganise its accounting systems to accommodate the different financial arrangements required for the relatively new long leasehold properties under its management, as compared with the established arrangements for its periodic tenancies.
12. In the event, in 2012 the Respondent distributed the Reserve Fund amongst its long leaseholders. This was done by making a credit against current and future service charges. The Applicant's credit should have been £988.09. The Applicant's contention was that her account had not been credited with this sum.
13. In the Previous Tribunal Decision, the tribunal had determined that some of the costs incurred by the respondent for the years 2007 to 2011 were unreasonable and therefore the service charge payable was reduced.

Issue 4

14. On 4th July 2019, following the hearing on 26th June 2019, the Tribunal received an application under section 20C of the Landlord and Tenant Act 1985 for a determination limiting the landlord's costs of the proceedings heard on 26th June 2019 from being included in a service charge.
15. It subsequently appeared that the application may not have been forwarded to the Respondent by the Applicant therefore the Tribunal forwarded the application to the Respondent on 5th August 2019 with a direction that if the Respondent had any representations to make in respect of the application under section 20C they should be served on the Applicant and the Tribunal by 5.00 p.m. on the 19th August 2019. Tozers LLP Solicitors replied on behalf of the Respondents in accordance with the Direction

The Law

16. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Description of the Property

17. The Tribunal did not inspect the Property but in a previous Decision, a copy of which was provided in the Bundle, it was described as follows:
18. The Building is a two-storey block of 4 flats or maisonettes, in that each unit has its own front door. The building is in effect in two parts with two flats on one side and two on the other. Each side has a ground floor extension to the one side of which is the front door to the ground floor flat and to the other side is the front door to the first floor. The door opens into a lobby which is exclusively for the use of the first-floor tenant. Stairs rise from the lobby to the first floor. There are no internal common parts.
19. The Building is constructed of brick, rendered to the upper part of the first floor, under a pitched tile roof. The windows are upvc double glazed units and the front doors, guttering and down pipes are also upvc. There is a lobby to the front of the Building. Externally the only common part is a path that leads from the front gate to the front doors and to the rear of the property where the bins are stored.
20. The Property is a first floor two bedroom flat, with living room, kitchen and bathroom. The demise of the Property includes the front and rear gardens subject to the right of the ground floor tenant to have access to the rear of the Building to store her refuse bin and for the maintenance of her flat. A similar arrangement is understood to exist for the other part of the Building.

The Lease

21. A copy of the Lease was provided which was between the Northampton Borough Council (1), the Respondent, and Graeme Michael Civil and Barbara

Ann Civil Respondent (2) and the Applicant and was dated 27th August 2001. The Lease is for a term commencing on the 27th August 2001 to the 26th August 2126. The Lease was assigned to the Applicant on the 16th March 2006.

22. The Respondent covenants under Clause 7 of the Lease:

- (1) ... *(Not relevant to this Application)*
- (2) *To keep in repair the structure and exterior of the Flat and the Building (including the drains, gutters and external pipes but excluding glass windows) and to make good any defect affecting the structure...*
- (3) *To keep in repair the parts of the Building over which the Lessee has rights by virtue of this Lease*
- (4) *To ensure so far as practicable that all services provide by the Council and to which the Lessee is entitled under this Lease are maintained to a reasonable level and to keep in repair any installation connected with the provision of those services*

23. Clause 12 relates to the payment of the Service Charge as follows:

- (1) *The Lessee shall contribute towards the expenses of the Council on matters listed below. The inclusion of any item in the list does not of itself create or imply any obligation to provide the service in question*
- (2) *The Proportion which the Lessee shall contribute shall be the direct proportion of the number of bed spaces in the Flat to the number of bed spaces in all the dwellings in the Building... [It is noted that the Subject Property has two bedrooms which equates to 3 bed spaces there being a total of 12 bed spaces in the Building].*
- (3) *The contribution to be made by the Lessee shall be called the "Service Charge"*
- (4) *The List of Expenses*

24. The list of expenses is lettered A to O. The items in the list relevant to the Application are as follows:

- (A) *The maintenance, repair and renewal of: -*
 - (a) *The structure and exterior of the Building (including the roof, chimneystacks, gutters and rainwater pipes).*
- (B) *Cleaning and lighting the shared parts of the Building*
- (C) *Cultivating and maintaining any shared garden, landscaped areas or other ornamental features within or provided for the enhancement of the Building*

- (D) *Decorating the exterior and all the shared parts of the Building*
- (H) *Insuring against the (a) risk of damage to the Building...(b) third party risks in respect of the Building*
- (K) *The cost of electricity or other energy supply consumed in the operation of ...communal facilities*
- (L) *All other expenses incurred by the Council in and about the maintenance and proper and convenient management of the Building*
- (M) *The establishment of such fund as may be reasonably estimated by the Treasurer for the Council to provide a reserve against major expenditure on any items listed here which the Council anticipate will or may arise during the term of the Lease*
- (O) *Any expenses and fees incurred by the Council in relation to sections 18 – 30 of the Landlord and Tenant Act 1985 ...*

25. Clause 12(6) states that:

The Service Charge shall be paid in the following manner:

- (i) *The likely amount of the service charge for a year will be estimated by the Council and notified to the Lessee. The Lessee shall then make quarterly payments based on the estimate.*
- (ii) *As soon as practicable after the end of the year the Council shall prepare and serve on the Lessee a statement containing*
 - (a) *A summary of the expenditure incurred in that year relevant to the service charge, and*
 - (b) *The final amount of the service charge.*

The statement shall be accompanied by a certificate of the Council's Treasurer that the said summary of expenditure is a fair summary and sufficiently supported by accounts, receipts and other documents available to him.

- (iii) *If the final amount of the service charge exceeds the amount paid under the quarterly payments for the year then the Lessee shall pay the difference to the Council; and if it is less the Council shall pay the difference to the Lessee*
- (iv) *In preparing a statement under sub-paragraph (ii) above the Council may bring into account adjustments relating to earlier years where these are required by reason of more complete information becoming available or otherwise.*

- (v) *For the purposes of these provisions a year shall mean the Council's financial year, namely from 1st April to 31st March; and quarterly payments shall be due on the first days of April, July, October and January into evidence.*

Hearing

26. A hearing was held on 26th June 2019 attended by the Applicant and Mr Alexander Pritchard-Jones of Counsel, representing the Respondent and witnesses for the Respondent, Ms Helen Gardner the Leasehold Services and Right to Buy Team Leader and Mr David South Housing Service Manager for Northampton Partnership Homes. Northampton Partnership Homes is an Arm's Length Management Organisation responsible for the management of the Respondent's housing stock.

Issue 1 - Reasonableness and Payability of the Service Charges

27. With regard to the Application for a determination of the reasonableness and payability of the service charges incurred for the years ending 31st March 2012, 2013, 2014, 2015, 2016 and 2017 the Applicant provided the Actual Expenditure Accounts and the Respondent provided the Actual Expenditure Account for 2018 as follows:

Years ending 31 st March £	Responsive Repairs £	Insurance £	Management Fee £	Total £
2012	136.01	69.96	110.62	316.59
2013	54.31	73.04	137.20	264.55
2014	458.96	112.34	159.51	730.81
2015	184.45	92.78	143.52	420.75
2016	0	92.43	131.56	223.99
2017	0	112.22	159.89	272.11
2018	203.21	104.02	153.47	460.70

28. It was noted that the £10.00 Ground Rent had been included in the Service Charge accounts. The Respondent acknowledged that this was not correct and as from 2019 the Service Charge would be demanded separately and in accordance with the legislation. The Tribunal has no jurisdiction with regard to the amount and payment of the ground rent.
29. In addition, it was noted that an allowance had been made in the estimated service charge for "grounds maintenance" for the 2011–2012, 2012–2013, 2013–2014 and 2014–2015 and for "TV aerials" in 2014–2015. However, these costs had been omitted from the Actual Charge in accordance with the the Previous Tribunal Decision. The Respondent's Journal recording receipts and payments showed an accrual with a corresponding credit for these amounts.
30. The Tribunal considered each of the items of the Service Charge year by year.

Responsive Repairs

31. The details of the Responsive Repairs for each of the years in issue were set out in a Schedule provided by the Respondent. The schedule provided was more detailed than that initially given to the Applicant.

32. Responsive Repairs for the year ending 31st March 2012 were:

2011 - 2012					
Address	Job No.	Description	Date	Total Cost £	Apportioned Cost 1/4 of Total £
47A	N10237893	Gutter Renew:112mm pvcu; communal: gutter/downpipe repairs; front of property; two storeys; gutter length	29/10/2010	131.91	131.91 Not apportioned
45-47A	N1074669	Inspection: provide and erect ladder for inspection in conjunction with client representative to eaves level of roof to property – 2 storey and remove on completion Fire Safety Program	09/08/2011	16.39	4.10
					136.01

33. The Applicant said that the bill for the guttering should have been shared. The Tribunal noted that the description of the work identified the guttering as being “communal”. The Ms Gardner and Mr South agreed.

34. The Tribunal determined that the Applicant’s share should be reduced to £32.98.

35. The Tribunal asked for an explanation of the Roof Inspection under the Fire Safety Program. Ms Gardner and Mr South said they did not know. The Tribunal considered that in the knowledge and experience of its members this was a health and safety inspection which is undertaken outside the Management Fees. It therefore determined the cost of £4.10 was reasonable.

36. The Tribunal determined that the reasonable cost of the Responsive Repairs for 2011 – 2012 apportioned to the Applicant was £37.08.

37. Responsive repairs for the year ending 31st March 2013:

2012 - 2013					
Address	Job No.	Description	Date	Total	Apportioned

				Cost £	Cost ¼ of Total £
47	N1149408	Wheelie Bin Access	29/10/2010	217.22	54.31
					54.31

38. The Applicant said that this work was exclusively for number 47 as it was to renew the gate which was not communal. It was noted that the address on the schedule was specifically referred to as number 47 and after some discussion with regard to the different accesses to the flats it was agreed the amount should have been charged to the tenant of number 47 alone.

39. The Tribunal therefore determined the cost of £54.31 apportioned to the Applicant as unreasonable.

40. The Tribunal determined that the reasonable cost of the Responsive Repairs for 2012 – 2013 apportioned to the Applicant was £54.31.

41. Responsive Repairs for the year ending 31st March 2014 were:

2013 - 2014					
Address	Job No.	Description	Date	Total Cost £	Apportioned Cost ¼ of Total £
45-47A	N1200107	Communal drain to rear of 45 blocked/ overflowing feed for downpipes/waste water	07/05/2013	28.00	7.00
45-47A	N1247734	Slates loose or broken, tiles have already fallen at rear	30/12/2013	118.96	29.74
45-47A	N1247999	Renew half round or angled ridge or hip tiles edge bedded on roofing tiles with solid bedding at butt joints, follow up to job N1247734	14/01/2014	118.67	29.67
45-47A	N1252387	Remove defective tile and re-fix new, replace felt and battens if necessary and remove spoil, follow up to job N1247999	11/03/2014	250.00	62.50
45-47A	N1229187	Joist renew 100mm deep to floor. This should not have been charged so will credit	29/10/2013	385.78	96.45

		account			
45-47A	N1229863	Rake out to existing joints of brickwork minimum 12 mm deep and repoint brickwork mortar to match existing and remove spoil	10/10/2013	187.51	46.88
45-47A	N1230170	Rake out to existing joints of brickwork minimum 12 mm deep and repoint brickwork mortar to match existing and remove spoil	29/10/2013	164.16	41.04
45-47A	N1230356	Aco Drain to rear and gable	23/10/2013	250.00	62.50
45-47A	N1202499	Clear blockage to gully including rodding as necessary, flush with clean water and remove waste and debris	21/05/2013	50.00	12.50
45-47A	N1202500	Wall: rake out to existing joints of brickwork minimum 12 mm deep and repoint brickwork mortar to match existing and remove spoil. Front wall 2msq, Gable 4 msq, Rear wall 4 msq and vents to front	05/06/2013	250.00	62.50
45-47A	N1202503	Client inspection – internal joinery. This should not have been charged and so will credit account.	05/06/2013	32.76	8.19
					458.96

42. The Tribunal noted that the Respondent had agreed that the costs of renewing a timber joist for £96.45 and undertaking an inspection of £9.19 should not have been charged to the Applicant.
43. The Applicant was critical of the three jobs for repairing the roof. She said that if job number N1247734 had been done correctly on 30th December 2013 it would not have been necessary to carry out jobs numbered N1247999 and N1252387. Indeed, the cross referencing in the job descriptions appeared as if she was being charged twice for the same job.

44. Counsel for the Respondent said that those present had no more information than the schedule, but it appeared that when work was carried out on December 2013 it was found that further work was required on the roof which was carried out in January and March 2014.
45. The Tribunal accepted that on the balance of probabilities this was correct. It was likely that the extent of any work was not apparent until the maintenance team were on the roof.
46. The Tribunal determined the roof repairs to be reasonable.
47. Similarly, the Applicant questioned jobs numbered N1229863, N1230170 and N1202500 for re-pointing the brickwork. She said that this also appeared to be charging several times for the same work.
48. Counsel for the Respondent said that those present said again that they had no more information than the schedule.
49. The Tribunal found from the knowledge and experience of its members that the re-pointing was of a large area of brickwork and would have taken several days when weather permitted. For the work described the cost was determined to be reasonable.
50. The work carried out on the drains was not put in issue and in the absence of evidence to the contrary the Tribunal determined it to be reasonable.
51. The Tribunal determined that the reasonable cost of the Responsive Repairs for 2013–2014 apportioned to the Applicant was £354.32.
52. Responsive Repairs for the year ending 31st March 2015 were:

2014 - 2015					
Address	Job No.	Description	Date	Total Cost £	Apportioned Cost ¼ of Total £
45-47A	N1332802	Roof temporary repair slate or tile missing after storm	04/03/2015	737.78	184.45
					184.45

53. The Applicant questioned the cost of the temporary roof repair. She said that work had already been carried out on the roof in 2014. If this had been done properly surely a temporary repair in 2015 would not have been necessary. In any event she said that if the work was as a result of storm damage then it should have been paid for under the insurance.
54. Counsel for the Respondent said that those present had no more information than the schedule as far as the work was concerned. However, they were able to inform the Tribunal that the insurance excess is £100.

55. The Tribunal noted that the work was as a result of storm damage and that it may have been covered by insurance although this could not be certain without looking at the policy documents. The Tribunal noted that if a claim had been made it would have been relatively small and that for such claims the administrative cost of claiming and the potentially increased premium as a result may not justify the making an insurance claim.
56. In the circumstances the Tribunal considered the cost of £184.45 apportioned to the Applicant, reasonable. Therefore, the Tribunal determined that the reasonable cost of the Responsive Repairs for 2013 – 2014 apportioned to the Applicant was £184.45.
57. No Responsive Repairs were carried out in the years 2015 to 2016 or 2016 to 2017.
58. Responsive Repairs for the year ending 31st March 2018:

2017 - 2018					
Address	Job No.	Description	Date	Total Cost £	Apportioned Cost ¼ of Total £
45-47A	N1507338	Roof tile: renew 10 plain concrete or clay tiles	20/04/2017	406.08	101.52
45-47A	N1561325	Inspection of fencing	15/11/2017	22.78	5.70
45-47A	N156133	Erect chain link fencing 1.20 m high with pcc posts cast into concrete, three 2.5mm mild steel line wires and galvanised or plastic-coated steel	21/11/2017	362.45	90.61
45-47A	N156093	Inspection of fencing	14/11/2017	21.53	5.38
					203.21

59. The Applicant questioned the roof repairs as for previous years. The Tribunal understood her concern over the extent of roof works but was of the opinion that on a property of this age on going roof repairs would be necessary and preferable to a roof replacement. The Tribunal therefore determined them to be reasonable.
60. There was some discussion as to the position of the fencing that had been replaced. The Applicant had complained about the timber side boundary fence at the rear of the Property. She said that this had been in a very poor state and provided photographs of it. She said that she had told the Respondent that the fence needed repair and she alleged that it was in breach of her lease that they had failed to do so. She said she had paid to have work carried out on this fence.

61. It was apparent that this was not the fence that had been replaced but a communal fence to the front of the Property.
62. The Tribunal determined that the cost of the chain link fence was reasonable.
63. With regard to the timber fence at the rear, the Tribunal said that it was not able to make any order with respect to an alleged breach of the lease. In addition, as the Respondent had not charged her for repairing the timber fence this was not a part of the service charge. It was also understood not to be a shared fence and therefore no set off of the cost attributable to other tenants was considered appropriate.
64. The Tribunal considered that the inspection of the fencing was a cost that should come within the Management Fees. It therefore determined the costs of £5.70 and £5.38 were unreasonable.
65. The Tribunal determined that the reasonable cost of the Responsive Repairs for 2017 – 2018 apportioned to the Applicant was £192.13.
66. Therefore, the Tribunal determines that the reasonable cost of the Responsive Repairs are as follows:

Year ending 31 st March	Service Charge demanded	Amount determined reasonable by Tribunal
2012	£136.01	£37.08
2013	£54.31	£54.31
2014	£458.96	£345.32
2015	£184.45	£184.45
2016	£0	£0
2017	£0	£0
2018	£203.21	£192.13

Insurance

67. Although the amount of the premium for the insurance was not put directly in issue as the Application related to the service charge generally, for the years in issue, the Tribunal confirmed with the Respondent that the insurance had been obtained in the same manner as reported in the Previous Tribunal Decision.
68. Counsel for the Respondent said that the Insurance was a block insurance policy for all the Respondent's 963 properties. A tendering exercise had been carried out together with a section 20 Landlord and Tenant Act 1985 procedure as the policy was to be for more than a year. Seeking to demonstrate that it had sought best value the Respondent stated that it had initially selected one insurance company but subsequently selected another because it provided better value.

69. The Tribunal determined that the insurance policy had been obtained at arms' length in the marketplace in accordance with *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* (1996) 29 HLR 444 CA. In that case it was held that a landlord is not obliged to obtain the lowest premium but must agree the premium at the market rate or negotiate the insurance contract at arms' length in the marketplace. This was demonstrated in the present case by following the section 20 procedure.
70. In the absence of evidence to the contrary the Tribunal repeats the Previous Tribunal Decision.
71. In that decision that tribunal referred to *Forcelux Ltd v Sweetman and another* [2001] 2 EGLR 173 (LT) where it was held that a direct comparison cannot be drawn between a commercial landlord and an individual leaseholder. Commercial landlords have access to a limited pool of insurers prepared to provide commercial cover for individual properties. The Tribunal also noted that the courts accepted the practice of commercial landlords with a portfolio of properties insuring a block of properties as a single entity. The Tribunal found that local authorities like commercial landlords could obtain best value through the purchase of block policies.
72. Also, in *Forcelux Ltd v Sweetman and another* it was stated that the question the Tribunal has "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." In doing so it has to be considered upon looking at the evidence "whether the landlord's actions were appropriate, properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act". The Tribunal found the Respondent's actions were appropriate and determined that the insurance premium for all the years in issue was reasonable and payable.

Management

73. The Applicant stated that the cost of Administration was unreasonable as it was more than any other item.
74. The Respondent stated that the management fee includes the cost of the leasehold, technical, repairs, finance and IT teams. The role of the leasehold team is to arrange repairs to the properties, calculate and account for the service charge and ground rents recovering the service charge and ground rents and arranging and checking insurance. Every leaseholder pays the same management fees.
75. It was added that following the Previous Tribunal Decision where it was found that the management charges were unreasonable the management fees were adjusted going forward with the result that for the year ending 31st March 2019 the charge is £180.40 per years.
76. The Tribunal considered a table that had been included in a letter dated 13th July 2016 from the Respondent's solicitors LGSS Law to the Applicant's solicitors to explain the service charges demanded. The table showed that the

previous tribunal had determined an increase in fees for the period 2007 to 2011 in accordance with the retail price index to be reasonable. It was submitted that for the period 2013/13 onwards this was not practicable as the index had fallen but costs had increased. The Tribunal sets out the table below in a modified form to illustrate the point

Year	2012/13	2013/14	2014/15	2015/16
RPI	4.8%	3.1%	2.7%	1.6%
NBC Actual fees	£137.20	£159.51	£143.52	Estimated £163.20
Adjustment required if RPI followed	-£32.20	-£51.51	-£32.52	-£37.40

77. The Tribunal is of the opinion that this is a small block and accepted that there is an optimum charge below which it would not be economic for a managing agent to carry out the work. In the knowledge and experience of its members the Tribunal determined that although the adjustment made in line with the RPI in 2012 by the previous tribunal was reasonable then, it did not now reflect the current market.
78. The Tribunal determined that in the knowledge and experience of its members the management fees demanded for the years in issue are reasonable and payable.
79. The summary of the Tribunal's determination is as follows:

Years ending 31 st March	Responsive Repairs demanded	Responsive Repairs Determined	Insurance	Management Fee	Total Demanded	Total Determined
	£	£	£	£	£	£
2012	136.01	37.08	69.96	110.62	316.59	217.66
2013	54.31	54.31	73.04	137.20	264.55	264.55
2014	458.96	345.32	112.34	159.51	730.81	617.17
2015	184.45	184.45	92.78	143.52	420.75	420.75
2016	0	0	92.43	131.56	223.99	223.99
2017	0	0	112.22	159.89	272.11	272.11
2018	203.21	192.13	104.02	153.47	460.70	449.62
Total					2,689.50	2,465.85

80. The Tribunal determined that the reasonable Service Charge payable by the Applicant to the Respondent for the years in issue is as follows:
£277.66 for the year ending 31st March 2012
£264.55 for the year ending 31st March 2013
£617.17 for the year ending 31st March 2014
£420.75 for the year ending 31st March 2015

£223.99 for the year ending 31st March 2016
£272.11 for the year ending 31st March 2017
£449.62 for the year ending 31st March 2018

Issue 2

81. The Applicant also claims that the Respondent is in breach of the lease due to their failure to repair a shared fence, footway and gate and due to their failure to allow the Applicant quiet enjoyment of her property.
82. If the Applicant had been charged for repairing a shared fence, footway or gate and the work had not been carried out to a reasonable standard, or at all, then the Tribunal could deal with these matters. However, the Applicant's complaint was that the work was due but, in breach of the Lease, had not been carried out. Equally well, no service charge expenditure had been incurred.
83. The Tribunal is not able to deal with alleged breaches of lease with regard to this application and as no charge had been made for such work no determination as to reasonableness could be made.

Issue 3

84. The Tribunal considered the evidence with regard to the Applicant's claim that the Respondent has failed either to credit the Applicant with her contribution to the Reserve Fund which had been distributed to the Tenants or the adjustments which should have been credited to her account following the Previous Tribunal Decision.
85. The Applicant provided a schedule setting out the actual service charge demanded, the service charge determined by the previous tribunal to be reasonable, the amounts she had paid and the amounts she said should have been credited to her i.e. the difference between the "demanded" and "determined" service charge and the amount of the "reserve fund". She submitted that these figures showed that she should now be in credit not in arrears. To calculate the amount to be credited following the previous decision the Tribunal totalled the actual costs of the service charge demanded for the years in issue (2007 to 2011) and the total determined to be reasonable and subtracted the one from the other. The Tribunal found that the difference between the "demanded" (£2,688.92) and "determined" (£1,312.19) service charge resulting from the previous tribunal decision was £1,376.73.
86. The Respondent provided a statement of account retrieved from their archives for the period 1st April 2007 to 22nd July 2011 which related to the service charge which was the subject of the previous tribunal decision (the Archived Account). It was said that on 22nd July 2011 a new accounting system had been implemented. The statement did not detail the items of the service charge but recorded the estimated demands/invoices as deficits and the Applicant's payment as credits.
87. The total amount of the demands/invoices recorded as deficits was £2,369.57 and the total amount paid by the Applicant and credited to her account was

£1,144.97. This gave a deficit which showed the Applicant as having arrears of £1,244.60 which was transferred to the new accounting system.

88. The new accounting system is an accounting journal showing all the transactions on the Applicant's account (the Transaction Statement). It commences on the 23rd June 2011 with a deficit of £1,224.60. There then follow all the itemised charges against the account (the equivalent of deficits) and all the payments or credits to the account.
89. The Tribunal looked at both the Archived Account and Transaction Statement for the £988.09 contribution to the Reserve Fund and the £1,376.73 difference between the total "demanded" and "determined" service charge for the 2007 to 2011 years in issue.
90. The Tribunal found that on 20th March 2012 the sum of £988.09 had been credited to the Applicant's account. However, none of the entries in either the Archived Account or the Transaction Statement corresponded to the sum of £1,376.73.
91. Counsel for the Respondent said that those present could not comment on the apparent omission because none of them were officers of the Respondent at that time. Therefore, they were entirely dependent upon the records with which they had been provided.
92. The Tribunal found that the £1,376.73 difference between the total "demanded" and "determined" service charge for the 2007 to 2011 years in issue had not been credited to the Applicant's account.
93. The Tribunal made this finding on the balance of probabilities in that the accounts did not record the amount. The system had been changed at the time when in the normal course of the Respondent's business, the adjustment required by the determination would have been made and it was probable that in the changeover the adjustment was not made. This omission would have been compounded by the archiving of the records to which the determination related, making it more difficult for the omission to be identified subsequently.
94. This finding confirms the District Judge's finding in respect of the Claim against the Applicant for arrears made by the Respondent in the County Court sitting in Northampton in 2017 when in April 2018 the claim was dismissed as the court was not satisfied that allowances ordered by the Tribunal in July 2012 had been applied. It also explains Ms Helen Gardner's surprise at this decision because the records available to her which she relied upon were split between accounting systems and the Archives Accounts in particular having short comings.
95. The Tribunal therefore sets out in the table below its determination as to the amount payable by the Applicant to the Respondent by reference to the following:
 - a) Identifying the year in issue.

- b) The actual service charge demanded. These figures are taken from the previous decision for the accounting periods ending 31st March 2007 to 2011 and from the service charge accounts provided for the accounting periods ending 2012 to 2018.
- c) The Tribunal's determination as to the reasonableness of the service charge. These figures are taken from the previous decision and the current decision.
- d) The sums paid by the Applicant. These figures are taken from the Archived Accounts set out in the email provided on page 27 of the Respondent's Bundle from Erica Linnett to Helen Gardner dated 24th May 2017 for the accounting periods ending 31st March 2007 to 2011 and the Transaction Statement for the accounting periods ending 2012 to 2018. A Financial Schedule provided by Ms Gardner. The credit of £1,376.73 is added in accordance with its finding in this decision.

Year ending 31 st March	Actual Service Charge demanded	Tribunal's Determination	Sums paid or credited to the Applicant
2007	508.35	207.20	0
2008	532.62	249.54	539.73
2009	533.27	363.04	413.51
2010	575.26	218.73	0
2011	539.42	273.68	191.73
Total	2,688.92	1,312.19	
Difference between Demanded and Determined Service Charges Credit			1,376.73
Reserve Fund Credit			988.09
2012	316.59	217.66	335.00
2013	264.55	264.55	
2014	730.81	617.17	
2015	420.75	420.75	300.00
2016	223.99	223.99	
2017	272.11	272.11	
2018	460.70	449.62	
Total	2,689.50	2,465.85	
Difference between Demanded and Determined Service Charges Credit			223.65
Total		3,778.04	4,368.44
Credit			590.40

96. The Tribunal finds that the Applicant had not been credited with the adjustments which should have been credited to her account following the Previous Tribunal Decision. The Tribunal therefore finds that the Applicant's service charge account is in credit by the sum of £590.40.
97. However, this does not take into account the Ground Rent payable by the Applicant. The Applicant should also bear in mind that she is in credit largely

due to the distribution of the Reserve Fund. She should therefore ensure that she should now make regular service charge payments and set money aside for any major works such as roof repairs.

98. The Tribunal noted that in the Transaction Statement there were entries in the adjustment column dated 19th and 20th May 2014 for Leasehold Arrears Fee of £70.00 and Court Fee of £60.00. No demand has been made for these in the Service Charge and it would unreasonable taking into account this determination for such demand to be made.

Issue 4 - Application under Section 20C

99. In respect of the application under section 20C of the Landlord and Tenant Act 1985 for a determination limiting the landlord's costs of the proceedings heard on 26th June 2019 from being included in a service charge Tozers LLP Solicitors replied on behalf of the Respondent.
100. It was said that the Respondent was of the opinion that Clause 12 (o) of the Lease enabled it to recover the costs of the proceedings through the service charge. The legal costs incurred came to £2,425.00 plus VAT. When recoverable through the service charge the sum would be chargeable to the Block and so split 4 ways. Two of the tenants have secure tenancies and so their share would be met by the Respondent. The remainder of the costs would be split between the Applicant and the other leaseholder. It was pointed out that the other leaseholder had not been named or even referred to in respect of these proceedings. It was questioned whether it would be fair (rather than reasonable) to charge this leaseholder a share of the costs.
101. On the other hand, it was pointed out that the Applicant had made three applications to the Residential Property Tribunal and had been engaged in two County Court cases. It was submitted that all these cases could have been avoided if the Applicant had engaged in meaningful dialogue with the Respondent.
102. It was submitted that there should be costs consequences for the Applicant to discourage her from resorting to litigation in the first instance rather than as a last resort. It was added that the Applicant had raised points which were not in the Tribunals jurisdiction and that to do so amounted to unreasonable behaviour.
103. The parties viewed the result of the current proceedings as a 'score draw' in that the Applicant was largely unsuccessful in challenging the Service Charge. If costs were to follow in the event it was the Respondent's opinion that the Applicant was unsuccessful and the Respondent would be able to recover their costs in their entirety.
104. It was added that the Respondent being a local authority has leasehold properties which are managed by an Arm's Length Management Organisation which is non-profit making meaning that any 'profits' made are recycled for the benefit of the leaseholders and tenants. If the Respondent is not able to

recover their costs then it will be to the detriment of the leaseholders and tenants and third-party charitable organisations whom it supports.

105. When making a decision under section 20C, the Tribunal can only consider whether an order should be made, limiting a landlord's costs incurred in relation to the particular proceedings before the Tribunal. It cannot take into account other proceedings in which the parties may have been engaged.
106. The same applies to an award for costs for unreasonable behaviour under Part 2, rule 13 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. With regard to costs generally the Upper Tribunal stated in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 at paragraph 62:

“The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs...”.
107. Therefore, the Tribunal's jurisdiction is one in which costs are not generally borne by a losing party. There have to be very good grounds indeed to award costs for unreasonable behaviour and the Tribunal finds that such grounds do not exist in this case.
108. In deciding whether or not it is just and equitable in the circumstances to grant an order under section 20C of the Landlord and Tenant Act 1985 the Tribunal considered the conduct of the parties and the outcome of the proceedings.
109. The Tribunal found that the Applicant had been sporadic in the payment of her service charges but tracing a tenant's service charge account is part of the job of the property manager.
110. The Respondent's records showed the Applicant to be in arrears with her service charge but she believed that adjustments had not been credited to her account following the Previous Tribunal Decision. The Applicant did engage in meaningful discussion instructing a solicitor who corresponded with the Respondent's legal representative (copies of correspondence were included in the bundle). Unfortunately, in the course of this dialogue the omission of the adjustment from the Respondent's records was not identified which led to the present application.
111. Therefore, in this case the parties have acted reasonably in the course of the proceedings based upon what they believed to be the situation.
112. With regard to the outcome in respect of Issue 1 the Applicant was correct in her belief that there were discrepancies in some of the charges for Responsive Repairs, although all other costs were determined to be reasonable. Issue 2 was not within the Tribunal's jurisdiction. In respect of Issue 3, the Applicant was correct that she had not been credited with the adjustments of £1,376.73.

This was identified by the Judge in the County Court in earlier proceedings but not acted upon by the Respondent. The Tribunal finds that if the Applicant had not made this application the credit, which is significant, would not have been credited to her account.

113. Both parties have incurred costs in the course of these proceedings and the Tribunal is of the opinion that each should bear their own. Therefore, the Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Respondent.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 - THE LAW

1. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
2. Section 18 Meaning of "service charge" and "relevant costs"
 - (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs

- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
 - (3) for this purpose
 - (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period
3. Section 19 Limitation of service charges: reasonableness
- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
 - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
4. Section 27A Liability to pay service charges: jurisdiction
- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.