FIRST - TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at Barnstaple sitting remotely by CVP Hearing

Tribunal Reference	**:**	CHI/18UE/LSC/2020/0080 CHI/18UE/LSC/2020/0081
Court Claim Nos	**:**	120MC579 130MC441
Property	**:**	Flats 1 and 2, 19 Oxford Grove Ilfracombe EX34 9HQ
Applicant/Claimant	**:**	Gerald Terrance Fitzgerald
Respondent/Defendants	**:**	Katy Beardshall (Flat 1) Emma Cook (Flat 2)
Type of Application	**:**	Transferred proceedings from County Court in relation to service charges
Tribunal Members	**:**	Judge C A Rai (Chairman) Mr M C Woodrow MRICS (Chartered Surveyor)
In the County Court	**:**	Judge C A Rai sitting as Judge of the County Court exercising the jurisdiction of a District Judge
Date and venue of Hearing	**:**	27 October 2020 by remote CVP Hearing
Date of Decision	**:**	4 December 2020

DECISION

Summary of the decisions made by the FTT

1. None of the outstanding service charges are payable.

2. Mrs Cook is not liable to pay service charges £4,029 demanded by the Applicant.

3. Miss Beardshall is not liable to pay service charges of £2,755.60 demanded by the Applicant.

4. The FTT makes an order under paragraph 5 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 extinguishing the Tenant's liability to pay a particular administration charge in respect of litigation costs.

Summary of the decisions made by the County Court

5. The Applicant accepted that he was not entitled to pursue his claim for rent of £3,640 against Miss Beardshall.

6. The Applicant's claims are dismissed. No order for costs.

Background

7. The Applicant landlord issued proceedings against each of the two Respondents in the County Court Money Claims Centre, under claim numbers 120MC579 (Flat 1 Beardshall) dated 28 January 2020 and 130MC441 dated 11 March 2020 (Flat 2 Cook).

8. Miss Beardshall filed a defence dated 16 February 2020 and Mrs Cook filed a defence dated 30 March 2020.

9. The proceedings which were both allocated to the Small Claims Track were transferred by the County Court at Barnstaple to the First-tier Tribunal by Orders made by District Judge Griffith dated 12 June 2020 and 13 July 2020, respectively.

10. The subject property is Flat 1 and Flat 2, 19 Oxford Grove Ilfracombe EX34, 9HQ.

11. The claim in the County Court against Miss Beardshall comprised of the following:-
    - £2,755.60 for service charges
    - £3,640 rent for the use of the backyard
    - interest on arrears of service charges
    - costs of the action

12. The claim in the County Court against Mrs Cook comprised of the following:-
    - £4,029 in respect of service charges
    - interest on arrears of service charges
    - costs of the action

13. The Orders transferring issues to the First-tier Tribunal were in very wide terms:

    "The Claim transferred to the First Tier Tribunal, residential property chamber for the tribunal to determine all aspects of the claims within its jurisdiction. A Judge of the Tribunal shall sit as a District Judge to determine the aspects of the dispute falling within the jurisdiction of the County Court" (Beardshall Flat 1)

    "transfer to the 1st Tier Tribunal (Residential Property Chamber), to resolve all disputes within its jurisdiction. A judge of the Tribunal shall

sit as a District Judge to resolve any disputes within the jurisdiction of the County Court" (Cook Flat 2).

14. All First-tier Tribunal ("FTT") judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to the ground rent, interest or costs that would not normally be dealt with by the Tribunal.

15. Accordingly Judge C A Rai presided over both parts of the hearing which has resolved all matters before both the Tribunal and the Court.

16. This decision will act as both the reasons for the FTT decision and the reasoned judgement of the County Court.

Directions

17. The Tribunal issued two sets of directions dated 17 August 2020 which stated that the cases would be determined following a remote video hearing on 27 October 2020. The Directions for Flat 2 stated that case would be heard with the case of Flat 1. The Directions in both cases stated that the Tribunal would not carry out an internal inspection of the Property but that if a party considered this was necessary, it must make an application before the date the hearing bundle was provided. None of the parties made such an application

18. The Applicant was required to provide the Tribunal with : -
    - A signed and dated statement of truth setting out each aspect of the case against each Respondent and the detail of each charge comprising the amount claimed.
    - HM Land Registry copies of the freehold and leasehold titles.
    - A copy of the Leases.
    - Copies of the Service Charge Demands and Summary of Tenants Rights and Obligations.
    - Copies of all relevant documents including invoices.
    - Any witness statements on which he wished to rely.

19. The Respondents were both required to provide the Tribunal with:-
    - A signed and dated statement of truth setting out each aspect of their respective cases including a response to issues raised by the Applicant.
    - Copies of any other relevant documents relied upon.
    - Witness statements on which they wished to rely.

20. The Respondents were also directed to make any required applications under sections 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (CLARA).

21. The Applicant was directed to send a concise reply to each Respondent's statement. If any party disagreed with the Tribunal's assessment that there was no need for expert evidence, they were directed to apply to the Tribunal by 14 September 2020. None of the parties applied for permission to submit expert evidence.

22. The Tribunal directed that any application for costs must be supported by a statement of costs including a breakdown of work done and time spent which should be served, in the case of contractual costs, 7 days prior to the hearing and in all other cases, no later than 24 hours prior to the hearing.

23. The Applicant supplied separate bundles in respect of both of his claims to the Tribunal but prepared no statement of truth setting out the detail of each claim. He supplied a written statement in response to each of the Respondents' statements of case. He also supplied a collection of documents and a witness statement from Mrs Leech made in respect of both claims.

24. The documents received by the Tribunal office from both parties were divided into six bundles, three relating to each Property. These were the Flat 1 Core Bundle (CB1), the Flat 2 Core Bundle (CB2), the Applicant's Bundle for Flat 1 (AB1), the Applicant's Bundle for Flat 2 (AB2) and the Respondent's Bundles for Flat 1 (RB1) and Flat 2 (RB2).

25. The two Core Bundles contained all the court papers including applications and orders, the defences, the Tribunal Directions, the Paragraph 5A applications, copies of the leases of Flats 1 & 2 and extracts from the land registry leasehold titles.

26. The Applicant's two bundles contained all the documents he had supplied to the Tribunal and the Respondents' Bundles contained the documents supplied to the Tribunal by each Respondent. The Tribunal office paginated all the bundles electronically.

27. The Applicant and Miss Beardshall supplied further correspondence relating to costs by email on 26 October 2020. Mrs Cook sent further emails to the Tribunal on that day and on the 27 October 2020 but before the Hearing.

28. Both Miss Beardshall and Mrs Cook hold their respective flats, Flat 1 and Flat 2 under long leases which require the lessor to provide services and for the lessee to contribute towards the cost of those services by way of a variable service charge. The specific provisions of the leases are referred to later in this decision as appropriate.

The Hearing

29. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was V, (video all fully remote). A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that we were referred to were in six bundles of 94, 108 and 39 pages (Flat 1) and 66, 77 and 18 pages (Flat 2), which bundles were assembled and paginated by the Tribunal office. Further documents were received by email from the Applicant and one of the Respondents (Flat 1), relating to their respective costs' submissions, on the day before the Hearing.

30. The Hearing took place on the 27 October 2020 starting just after 10:00 am and ending just before 4:30 pm. Short breaks were taken at regular intervals during the Hearing to accommodate all the parties with an extended break between about 1:30 pm and 2:30 pm.

31. Mr Fitzgerald logged into the Hearing to present his case accompanied by Mrs Leech, his house agent, who logged in separately by telephone for a part of the Hearing but, for the most part, was logged in with the Applicant.

32. Miss Beardshall presented her own case and was accompanied by Mr Abbott as an observer. Mrs Cook presented her own case, and each was separately logged into the digital Hearing as were the Tribunal members and its Digital Support Officer who facilitated the log in and attendance of all participants.

33. The Applicant's bundles contained no information about his Freehold title but he confirmed to the Tribunal that it was an unregistered title. Official copies of the leasehold titles of Flats 1, 2 & 3, 19 Oxford Grove Ilfracombe EX34 9HQ were supplied by the Respondents. No copy of the lease dated 15 February 2013 made between Gerald Terrence Fitzgerald and Gavin Matthew Deane and Joanne Marie Deane, which is the current lease of Flat 2, was supplied by either party to the Tribunal but entry 2 of the Property Register for Title No DN632070 states that the original lease dated 22 September 1988, referred to in the 2013 lease, was formerly registered under DN248231. At the hearing Mr Fitzgerald offered to ask his solicitor to provide documentary evidence of his freehold title that day. The Judge confirmed that should it be required it could be supplied after the Hearing.

34. The Judge explained the jurisdiction of the Tribunal to the parties and referred to both section 27A and section 19 of the Landlord and Tenant Act 1985 (LTA 1985). She explained that the jurisdiction related to service charges. She also stated that this Tribunal had no jurisdiction to deal with an enfranchisement claim within the current proceedings.

35. During the Hearing, Mrs Cook stated that she had not seen a copy of the 2013 Lease relating to Flat 2, which was why she had not supplied it. The Applicant had not supplied a copy of this lease either although he recollected having granted it to the previous owner of Flat 2. Mrs Cook's evidence disclosed that she had insisted on the original lease of Flat 2 being extended as a condition of her purchase.

Applicant's case - Flat 1

36. The Applicant's claim, quantified in his County Court Claim dated 28 January 2020 [CB1 page 11 onwards], is for £6,395.60 plus the court fee of £410 and interest and costs.

37. The Applicant admitted that the service charges claimed were first demanded in a letter dated 23 August 2019 sent by his accountant to Katy Beardshall with a service charge statement (see paragraph 40 below). Miss Beardshall confirmed that she received notification of the outstanding amount from her mortgage lender on 26 October 2019 [AB1 page 23].

38. The Applicant has not supplied a detailed explanation of the amounts claimed. The only written summary of the amounts claimed is in the County Court Claim, his letters to NatWest [AB1 pages 20-22] and his emailed responses to Miss Beardshall and her solicitor.

39. Mr Fitzgerald admitted that the first written demand for any payment from Miss Beardshall was dated 23 August 2019 when his accountant had sent letters to both Miss Beardshall and Mrs Cook.

40. The service charge demand prepared by the Applicant's Accountant titled 19 Oxford Grove Ilfracombe Service Charge Statement 1st July 2016 to 31st December 2019 was enclosed with a letter dated 23 August 2019 sent by APB Accountants signed "on behalf of Mr Terrence Fitzgerald" (sic). No address for Mr Fitzgerald is endorsed on it, but his bank details are recorded on it. [AB1, pages 12-13]. There is no evidence that a Summary of the Tenants' Rights and Obligations was sent with that letter. Mr Fitzgerald refused to discuss the relevance of such a Summary.

41. The Statement demanded the following sums from Miss Beardshall as leaseholder of Flat 1: -

Insurance	1/7/16	65.29
	2017	140.06
	2018	149.94
	2019	154.98
Ground Rent	2017	50.00
	2018	50.00
	2019	50.00
Use of backyard	2016	520.00
	2017	1,040.00
	2018	1,040.00
	2019	1,040.00
Building Cleaning from	1/7/16	45.00
	2017	90.00
	2018	90.00
	2019	90.00
Carpet Cleaning	2017	18.75
	2018	18.75
	2019	18.75
Building maintenance works	2019	1,499.00
Fire alarms	2019	36.00
Accountant's Fee		75.00
Administration Charge 5%		314.08
TOTAL PAYABLE		**6,595.60**

42. Mr Fitzgerald submitted that that both the Respondents forfeited all their rights as tenants under their leases by not paying their ground rent when it was due. He stated that this omission suspended any legal remedies that might otherwise be available to them. He refused to either consider or accept that his obligations as Landlord were in anyway subject to or affected by current Landlord and Tenant legislation.

43. Mr Fitzgerald complained to the Tribunal about the two applications being heard together and the number of documents which he was expected to examine and refer to during the Hearing.

44. He told the Tribunal that he has paid money "out of his own pocket" to maintain and insure the Property. He said that Miss Beardshall had not paid towards the upkeep and had not paid her share of the insurance, the cost of servicing the fire alarm or the costs of cleaning the carpets in the communal areas.

45. When asked to confirm when he first demanded payment, he told the Tribunal that he had notified Miss Beardshall that she owed him money on "many" occasions.

46. When the Tribunal suggested to Mr Fitzgerald that, based on the written evidence supplied, it would have been impossible for the Tenant to pay him without information as to how and where to pay him, he refused to accept this. He said that his bundle contains correspondence between himself and Miss Beardshall which confirmed that he told her that she owed him money for the insurance and the ground rent. He said that she could have sent him a cheque.

47. The earliest evidence of written correspondence sent by Mr Fitzgerald to Miss Beardshall was an email dated 3 March 2017 [AB1 page 6] in which he expressed surprise that her solicitor did not "go through the freeholders solicitor to protect you and to let you know what rights you may have and may not have. On this note I have to say that you do not have any legal rights that would be the norm with the other tenants in your block".

48. He accused her of trespassing in the back yard of the property, cutting down a buddleia plant and storing bits and pieces in the yard. He requested that she remove all her property from the yard. He said when he visited the Property, he could smell cats in the communal areas and assumed that she had a pet which she must remove. He confirmed that he had increased the property insurance to £400,000 but said that if the other leaseholders did not agree to the increase, he would reduce it to the original "value". He said "however as previously stated above you do not have any legal rights as regards to the flat that you purchased. My accountant will be sending you a bill for the time you have been in the flat." [AB1 Page 6].

49. The Applicant's bundle contained copies of emails showing that Miss Beardshall had contacted the Applicant in 2018 about a leak in Flat 1. On 16 May 2018, Miss Beardshall sent the Applicant a copy of a letter from J C Davies, Plumbing and Heating Services, confirming Mr Davies had investigated a leak in her flat and whilst unable to locate the exact point, had assumed that the cause may be corrosion of a copper pipe which was part of the hot water and heating system. Mr Davies recommended a further investigation to resolve the problem [AB1 pages 7–8].

50. The Applicant emailed a response to Miss Beardshall dated 17 May 2018, which was copied to Mrs Leech, his house agent. He said that he did not believe the letter to be sufficient so as to enable her to make an insurance

claim and that the insurers would want to look at any survey that she had obtained prior to purchasing Flat 1. He said that she had insisted on him "hoiking up" the insurance through her solicitors. The other leaseholders in the block have not agreed to this hoik and you have not paid a penny towards the insurance. "If you …read the Lease Contract transferred from Mr McMeecham (sic) via the Newcastle Building society to you, that you are in breach of that contract. You have not paid any ground rent; you have not paid any maintenance money." He also said that she had illegally kept animals on the premises without permission and trespassed on the freeholder's yard. He accused her of altering the back door of the property by installing a cat flap without his permission [AB1 page 9]. The final paragraph stated: - "I need to get a positive response from you, if not I will have no alternative but to go through your mortgage company and litigation. You may need to see your solicitor for advice regarding the situation that you are in".

51. A further email from Mr Fitzgerald to Miss Beardshall, dated 26 May 2018, which repeats some parts of the previous email, stated "Your plumbers report indicates that the problem is internal owing to central heating. If that is the case, you will need to go through your insurance, and I will need to have sight of that insurance policy." Later, in the same email, he said that the other leaseholders had not agreed to this higher premium (which her solicitor first requested prior to her purchase) and you have not contributed your portion of the insurance premium thus you are not eligible to make a claim on the policy should the case arise. He suggested that she take legal advice [AB1 pages 10-11].

52. In response by an email dated 27 May 2018, Miss Beardshall advised the Applicant that she would forward his email to her solicitor and stated, "I think it's better not to communicate directly" [AB1 page 10].

53. Miss Beardshall raised questions during the Hearing about the outstanding insurance premiums which Mr Fitzgerald claimed to be due. He refused to accept that he had not provided Miss Beardshall with insurance schedules evidencing insurance cover insisting that a letter from Direct Line, his insurers, demonstrated that he had paid monthly premiums which totalled the amount shown on the service charge statement and was sufficient evidence of insurance cover [AB1 pages 93-96]. He insisted that the amount of the insurance cover should reflect the value of each flat, not building reinstatement costs and stated, more than once, that Flat 1 was worth less and less because of the diminishing term of the lease. When asked by Tribunal Member Mr Woodrow if he had sought advice about the building reinstatement value, he said he was an experienced property owner and had not taken advice. He said that the buildings insurance is index linked.

54. Mr Fitzgerald accepted that Miss Beardshall has paid something and agreed that his email dated 6 April 2020 records what has been paid [AB1, page 37]. In summary, it records that she paid £200 in ground rent for 2017–2020. On 11 February 2020 he confirmed that she had paid £927.55, (although the Slee Blackwell letter [AB1 pages 24 – 26] refers to a figure of £927.59). Mr Fitzgerald said that the following sums remain outstanding; Insurance £205.35; cleaning £135; carpet cleaning; £18.75; maintenance work exterior £1,249; backyard rent £3,640; administration fee £269.91; and court fees £410. (A total of £5,928.01).

55. He stated that he is entitled to re-enter Flat 1 and determine the lease and quoted the forfeiture clause in the lease. [AB1 page 37].

56. The Tribunal explained to Mr Fitzgerald that since section 166 of the Commonhold and Leasehold Reform Act 2002 (CLARA) came into force, a tenant under a long lease of a dwelling is not liable to make a payment of ground rent under the lease unless a landlord has given him notice relating to the payment and the date on which he is liable to make the payment.

57. Mr Fitzgerald stated that both of the Respondents failed to pay their ground rent and refused to acknowledge that he was obliged to demand the ground rent payment in accordance with the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 SI 2004 No. 3096. He said that he was "going by" the contract which he had given to the tenant and which he and they had signed and that the lease therefore had "primacy". When asked about the content of the Lease, he said it was a "crown lease" and that his solicitors would not have used it if it was not correct.

58. In response to the Tribunal's questions about when the Respondents were first asked to pay towards the cleaning of the communal areas, Mr Fitzgerald stated: -
- He is unhappy that the two claims have not been dealt with separately; he refused to accept that he had been notified of this in the Tribunal's Directions.
- He was unable to explain why the renewal lease for Flat 2 had not been produced. He suggested he simply included the lease in his bundle which Mrs Cook had sent to him.
- He refused to accept that he has any legal obligation to demand the ground rent or any of the consequences of his failure to demand the ground rent, as set out in section 166 of CLARA; and
- He accepted that he has no contractual right to invoice Miss Beardshall for rent for the back yard.

59. One of his emails, which appeared to refer to a proposed mediation in the County Court, suggests that that claim was £50 less than it should have been because he had credited all of the ground rent paid by Miss Beardshall when only £150 of it should have been credited. [AB1 page 37].

60. The Applicant's statement responding to Miss Beardshall's defence and statement of her case does not address issues raised by her with regard to the absence of information relating to the Buildings insurance, the lack of service charge demands or the absence of any consultation regarding the building maintenance or the allegations regarding the quality of the work.

He also suggests that alterations made by Miss Beardshall to Flat 1 led to her making false allegations about fire safety in the building. Furthermore, he interpreted Miss Beardshall questioning the quality of the cleaning service she was asked to pay for as being an insult to Mrs Leech.

Respondent's case (Miss Beardshall) –Flat 1.

61. In her defence to the County Court claim Miss Beardshall confirmed that she had made a payment of £927.59 to the Applicant and explained her reasons for disputing any further claim by reference to her solicitor's letter, a copy of which she had sent to the County Court. The calculation of that amount is set out in her solicitors' letter dated 12 February 2020 [AB1 Pages 24-26].

62. She told the Tribunal, as she had told the County Court, that she had not received a demand for money or an invoice from the Landlord until her lender, NatWest, received correspondence from the Applicant. She acknowledged that she had subsequently seen the 2019 invoice but said that it had not been posted to her in August 2019. See email dated 16 February 2020 to "moneyclaims" (the County Court), which was copied to her solicitor, [AB1 page 39].

63. When she bought Flat 1 from the Newcastle Building Society it confirmed that it had paid all amounts due up to the date of her purchase. Her mortgage is dated 29 July 2016, which implies that was the date of completion. She said she assumed that if monies subsequently became due from her, the Freeholder would have notified her and sent a bill.

64. Miss Beardshall stated that she was also aware that Mr Fitzgerald did not send an invoice to Mrs Cook at Flat 2 until 2019. She stated that Mr Fitzgerald has not fulfilled his duties as freeholder because he has not promptly billed his tenants for monies owed.

65. Following advice received from her lender, NatWest, she paid the ground rent and referred the demand from Mr Fitzgerald to her solicitor. Her solicitor advised her that the claim for rent for the back yard was not recoverable. She has provided evidence that the notice of assignment of the lease to her was never acknowledged by the Applicant's solicitor. It is not correct that she did not go through the Applicant's solicitor. Both her solicitor and the Seller had endeavoured to do this.

66. She said the Applicant accused her of shouting at him. When he was asked about this by the Tribunal, Mr Fitzgerald stated that he records "everything that occurs in the house".

67. She believed at the time that the current buildings insurance cover was for only £155,000. She stated that she has not been given any other information about the insurance cover other than Mr Fitzgerald was unwilling to increase the cover. She says an increase in cover was agreed before she purchased the flat but that she was subsequently told by Mr Fitzgerald he would not do it because she had not paid towards the insurance premium. She said she could not do this because she had not received his bank details or a bill.

68. She said that Mr Fitzgerald had told her that she did not own the flat and that her solicitor had "done me over". She referred to a letter sent by her solicitor to Mr Fitzgerald's solicitor dated 22 May 2017, with which the notice (of assignment) fee of £50 was sent [RB1 page 17- 18]. Her solicitor had sent them a copy of the old building insurance schedule and requested that Mr Fitzgerald increase buildings insurance to £400,000, as had already been requested by the seller, who had also offered to pay any increase in the premium. That letter also referred to an ongoing investigation of the water pipes by South West Water and indicated that the Landlord might be liable to repair those pipes. A letter dated 11 December 2017 from her solicitor confirmed that they had not received a response to their letter regarding "insurance, the pipes or freehold etc". Therefore, her solicitor requested information from her to enable it to return the £50 notice fee to her [RB1 page 16].

69. Miss Beardshall's defence to the County Court Claim stated that she was advised that the Applicant is not entitled to claim service charges invoiced more than 18 months after the costs were incurred and that her solicitors notified him of this. She was insistent that she had not received the Accountant's letter dated 23 August 2019 or the demand for payment until NatWest contacted her.

70. Miss Beardshall also stated that she has paid the outstanding ground rent.

71. Miss Beardshall told the Tribunal she had paid the Applicant £927.59 towards the service charges he had claimed were due from her.

72. The service charges listed on the accountant's statement sent to her lender [AB1, page 89], were: -
- Buildings Insurance for part of 2016 and 2017, 2018 and 2019
- Use of the backyard for part of 2016 and 2017, 2018 and 2019
- Building cleaning for part of 2016 and 2017, 2018 and 2019
- Carpet cleaning for 2017, 2018 and 2019
- Buildings maintenance works 2019
- Fire Alarms 2019
- Accountant fee
- Administration charge.

The ground rent for 2017, 2018 and 2019 was also listed and the administration charge of 5% was applied to the total of all the invoiced charges, (including the ground rent). The total demanded from Miss Beardshall was £6,595.60.

73. She paid the ground rent demanded and the ground rent due in January 2020 on 28 October 2019 (£200) and notified the Applicant on 31 October 2019. [AB1 page 23].

74. Subsequently, following receipt of advice from her solicitor, she paid Mr Fitzgerald a further £927.59. The payment was calculated on the basis that anything not invoiced but incurred more than 18 months prior to the date of the demand, was not legally payable. Furthermore, in the absence of any consultation prior to the 2019 building maintenance, the maximum recoverable by the Applicant was £250.

75. The payment by Miss Beardshall was for the following services: -
- Buildings insurance - £304.92 [2018 and 2019]
- Backyard – Nil
- Building cleaning £180 [2018 and 2019]
- Carpet cleaning £37.50 [2018 and 2019]
- Buildings maintenance –limited to £250
- Fire alarms £36.00 [full amount]
- Accountants £75 [full amount]
- Administration £44.17 equating to 5% of amount paid.

76. The Tribunal sought to establish when the Respondent was informed about the monthly cleaning costs. The Applicant accused Miss Beardshall of insinuating that the cleaner Mrs Leech had fraudulently invoiced cleaning costs when she had not cleaned the common parts. He said he had made a concession to Mrs Cook (relating to his claim against her) in respect of cleaning costs during a period when Mrs Leech had been unable to clean the corridors and entrance because of a family illness. He accused both Respondents of seeking to evade their financial responsibilities by questioning Mrs Leech's character [AB1 page 35].

77. Both Respondents have stated that the carpets in the communal areas have not been cleaned. The Tribunal has not located copies of any invoice relating to cleaning carpets in the bundles.

78. The Applicant admitted there had been no consultation about the costs of redecorating the exterior of the Building. He denied that he had any legal obligation to consult with the Respondents. It was suggested that "the invoice" attached to the 2019 Service Charge Statement was a quote not an invoice [AB1 pages 97-99]. On several occasions during the Hearing Mr Fitzgerald said that he had not paid the entire amount due to the Decorator. Miss Beardshall suggested that the works had not been finished, which the Applicant loudly denied. She also suggested that the works were not satisfactory as only one coat of paint had been applied. She produced two alternative quotes for the external decoration [RB1, pages 9-11]. Both are for significantly lower amounts than that which the Applicant has sought to recover from the Respondents for external decoration.

79. Miss Beardshall stated that when she bought Flat 1, the Applicant's phone number was not displayed on the wall, as it is now. She notified him of the water leak in 2017. When she telephoned Mr Fitzgerald, he told her that his buildings insurance does not cover the internal parts of the flats and that it is the Respondents' responsibility to insure those. That was his explanation why damage caused by the water leak would not be covered by his insurance policy. Tribunal Member Mr Woodrow suggested that what he had said was unlikely to be correct and the Tribunal would need sight of a copy of the insurance policy and current schedule to verify it.

80. In response to an accusation made by Mr Fitzgerald that she had not attended a court arranged mediation, Miss Beardshall confirmed that she had been prepared to attend the mediation but was advised by the mediator that if she was not prepared to pay anything more than already paid, she should not participate in it.

81. When the Tribunal asked Mr Fitzgerald to explain why he was claiming rent for her alleged use of the backyard as a service charge, he conceded that he would no longer pursue the claim for payment of "rent" of £3,640 from Miss Beardshall.

Applicant's case - Mrs Cook Flat 2

82. The total amount claimed by the Applicant is set out in his County Court Claim dated 11 March 2020 [CB2 page 1 onwards]. The claim is for £4,029 plus the court fee of £185 and interest and costs.

83. Mr Fitzgerald claimed that £1,749.10 is outstanding from 2016 and £2,280.60 is outstanding from 2019.

84. The only written summary of the amount claimed which the Applicant has provided is in his County Court claim form in which he refers to the leasehold contract, the bills sent by his accountant and receipts of work carried out on the property which are stated to be "accountants bill, fire alarm bill, insurance payment schedule, bills from cleaner".

85. A service charge statement titled 19 Oxford Grove shows service charges due for a period between 2013 and 2016. Only the demand for insurance is split into separate amounts for each year. The statement refers to all other amounts as being due each year or by reference to invoices. The ground rent, carpet cleaning and Building cleaning are shown as annual amounts. The Building Maintenance, Fire Alarm Maintenance and Accountants Fee are shown by reference to copies of two enclosed invoices. The total amount stated to be due from Flat 2 was £2,488.21 [AB2, page 7].

86. Mrs Cook replied by email to Mr Fitzgerald on 23 June 2015 and asked him "for tax purposes, please could you put the figures into invoices running from April 2013 to March 2014 and from April 2014 to March 2015" and said she would review. She said the month of March 2013 could be in a separate invoice as a stand alone (sic) [AB2, page 4].

87. By letter dated 30 April 2015 [AB2, page 2] Mrs Cook requested an account for the ground rent and asked for information regarding works to the chimney stack and missing downpipe/guttering. This letter appears to have prompted an emailed reply from Mr Fitzgerald dated 3 June 2015 (See paragraph 109 below).

88. A copy of Mr Fitzgerald's accountant's letter dated 23 August 2019 refers to the amount due as £4,522.70 being £2,773.60 for "this period", (2019) and £1,749.10 outstanding from the previous period [AB2 page 60-71]. It also refers to supporting documents and appendices "to the above".

89. The supporting documents include:- a "quote" from Tyrone Sanders, General Builder dated 24 June 2019 for painting the front and rear of 19 Oxford Grove for £3,996 (excluding scaffolding) and a quotation, dated 10 July 2019 from Access Scaffolding 2018, addressed to Gina Edwards for scaffolding for an indeterminate period for £2,000 [AB2, 61–65]. Four letters, all dated 2 August 2019, addressed to Mr Fitzgerald from Direct Line evidence revised payment details of an insurance premium for Policy No 200194121 during 2015, 2016, 2017, 2018 until 29 July 2019. Payments due in August, September, October, and November 2019 are marked as outstanding. There was also a copy of an invoice from Regina Leech, stated to be total billing for communal cleaning and management of 19 Oxford Grove Ilfracombe, between 17 June 2016 and 17 August 2019 of £1,140 (£30 per month x 38 months). There is also an invoice from Challenge Alarm Services Ltd for conducting the takeover of F/A and E/L Maintenance Report, dated 7 August 2019 for £72.

90. The Applicant's bundle also contains copies of two letters dated 18 November 2019 and 3 December 2019 demanding payment of the "enclosed invoice" from Mrs Cook [AB2 pages 15-16].

91. Mrs Cook responded to Mr Fitzgerald by email dated 20 December 2019 explaining that two earlier letters had been sent to her former address. She said that she had taken out her own building insurance cover as the Applicant had omitted to supply any evidence of his insurance cover as she had requested. She said, "your direct line paperwork dated 2 August 2019 shows no reference to 19 Oxford Grove or policy details", which explained why she was not happy to pay the insurance contributions demanded. She also stated that the amount he demanded was too much and three times as much as the cost of her own insurance cover. She said she would pay the ground rent [AB2 Pages 17– 18].

92. She disputed the charges for building cleaning because her tenant stated that communal areas were cleaned only 3 or 4 times a year. She wrote: - "Please can you ascertain from Gina how many times she has cleaned the communal area annually and adjust your bill accordingly".

93. She also stated she had used the same carpet cleaning firm that he had used last time he billed her, to clean her tenant's rug, who said that the only other cleaning they had done in the building during the past few years was in the top flat. For that reason, she had requested a copy of the invoice for carpet cleaning.

94. She said that she had not been consulted about the building maintenance and that the scaffolding had been erected without her knowledge which had denied her the opportunity to inform her tenant. She said that her tenant had told her that only one coat of paint had been applied to date and that the location of the scaffolding, and it being in situ for 4 months, had meant the windows could not be cleaned. She asked that he confirm when the work would be finished and stated that because he had failed to consult with the leaseholders, as required by section 20 of the Landlord and Tenant Act 1985 she was only agreeable to paying £250 towards the cost of the works.

95. She reminded him that she had asked him in May 2016 to repair the chimney and suggested that he obtained quotes for this now whilst the scaffolding remained in place. She reminded him that the damage caused internally by the down pipe leaking had still not been repaired. She told him it was inappropriate to have sent his son, who was not a qualified painter and decorator to do the redecoration work in her flat. She also enquired if the work would be covered by the building insurance.

96. She confirmed that only one fire alarm invoice had been enclosed so she would only pay her share of that.

97. She agreed to pay the accountant's fee but declined payment of the administration fee which she disputed because she said payment of the accountant's fee would cover administration.

98. She confirmed the transfer £493.00 to his account which comprised £150 ground rent, £250 towards painting, £18.00 fire alarm check and £75.00 for her share of the accountant's fee.

99. The Applicant responded in an email dated 8 April 2020 [AB2, pages 19-20]. In it he accuses both Respondents of being untruthful about the cleaning and of sullying Mrs Leech's character and accusing her of fraud. He suggested that both Mrs Cook and Miss Beardshall had bullied Mrs Leech. He also suggested that Mrs Cook has made a similar accusation about the decorator by suggesting that he had applied only one coat of paint.

100. That email was aggressive both in tone and content. The Applicant stated that that he will bring in an independent house management company to "run the upkeep of the building". He suggested that decoration would then cost in the region of £8,000 to £10,000 plus VAT as well as the scaffolding. The final paragraph of the first page states:-"Through your poor and non payment of money you owe for service charges etc, the consequenceare (sic) are that the leaseholders are going to struggle paying for the maintenance of the building. In 2022 there will be external and internal work done to 19 Oxford Grove. You well know that the exterior of the property is maintained every three years and the interior every six years". The second page of the email refers to accusations about the occupier of Flat 2 which have no relevance to these proceedings [AB2 pages 19-20].

101. A statement dated 11 October 2020 from Regina Leech is included in both the Applicant's Bundles, [AB1 page 75-76] [AB2 page 31-32]. Mrs Leech stated that she and her husband acquired Flats 3 and 4 in 2008 and have paid £120 a month towards the maintenance costs which was agreed, and which also includes the yearly ground rent of £50. She said that she had received no complaints about her cleaning until the invoice was issued. She stated she was shocked that Mrs Cook's tenant complained about the cleaning. She has cleaned the communal areas since 2008. She suggested that there may be an agenda on behalf of both Respondents as they refer to the Applicant as her ex-partner when she has been married to her husband for sixteen years. She makes references to the number of flats within the Building in a context not relevant to this application and suggests this is an indication that the Respondents are "ganging up on me

along with spurious allegations" about her. Her final comment is that she and her husband are the only tenants contributing to the upkeep of the property.

Respondent's case (Mrs Cook) -Flat 2

102. Mrs Cook purchased Flat 2 in March 2013 prior to which she had requested that the existing lease of Flat 2 was extended. The bundles contain extracts of letters exchanged between her solicitor and the seller's solicitor [RB2 pages 11, 14-15].

103. Her undated statement of truth, made in response to the Tribunal Directions, stated that the Applicant: -

- Failed to comply with the consultation requirements under section 20 of the LTA 1985 in relation to the external maintenance works. She also suggested that it should not be necessary to repaint the exterior of building every three years if appropriate paint was used and the standard of works carried out was satisfactory.
- Omitted to supply invoices in relation to services in respect of which he demanded a contribution and has repeatedly failed to respond to her requests for copies of invoices.
- Omitted to provide her with confirmation of buildings insurance cover which has led her to obtain and pay for her own insurance of her Flat.
- Omitted to comply with fire safety regulations by not providing an opening mechanism for the fire exit door leading to the flat roof until the commencement of these proceedings.
- Allowed the fire exit to remain blocked by scaffolding between August 2019 and May 2020 and failed to respond to complaints made to him through Mrs Leech.

104. Mrs Cook does not accept that the charge for cleaning is reasonable or that the cleaning for which the Applicant is recharging the Respondents has been carried out regularly by Mrs Leech.

105. She stated that the Applicant has never made good damage caused to her flat by water ingress despite her raising this with him on multiple occasions.

106. A 5% administration charge, calculated by reference to incorrect service charge demands, was added to the service charge statements. The accountant's fee for the preparation of a revised statement for service charges was recharged to her. In the absence of either engagement or consultation from the Applicant, she does not accept that the administration charge is either reasonable or recoverable or that she should pay for the preparation of the revised service charge statement.

107. Mrs Cook stated that Applicant has threatened her and issued the County Court claim against her for debts not legally due to him. Both the Applicant and Mrs Leech have made untrue allegations about her, her tenant Mr Abbott and Miss Beardshall since she and Miss Beardshall defended the Applicant's County Court Claims.

108. In her defence to the Applicant's County Court Claim, Mrs Cook stated that the Applicant first requested payment on 3 May 2016 for the period 2015

–2016. She responded to that request by email on 13 June 2016, and she referred to the content of her email as setting out her defence to the claim during that period. [CB2 pages 4-9].

109. The earliest correspondence Mrs Cook received directly from Mr Fitzgerald was an email dated 13 June 2015 [AB2 page 3] in which he stated "I have reduced the maintenance payments from £100 to £50 per month owing to the fact that the major work was completed before you purchased your flat. We will work From March to March of each year thus your payments to March of 2015 are £1200. The monies from March to June of this year 2015, will go on to the redecoration of 2018, where the exterior only will be decorated etc." He said that the buildings insurance is with Direct Line and he would get a copy to her or her father and it would be through his agent Mrs Gina Leach (sic) of the same building. He said that he would work out how much of the insurance she owed along with communal cleaning payments which is £25 per month for two years and you pay a quarter of that. There is also Fire Alarm maintenance and he mentioned the ground rent of £100 for two years.

110. Mrs Cook emailed Mr Fitzgerald on 9 September 2015 when she requested invoices and advised him that the communal area was not regularly cleaned and that her father (who occupied the flat) would be happy to clean the passageway between his flat and the front door by arrangement with his neighbour(s).

111. There is no evidence that Mr Fitzgerald supplied any further accounts to Mrs Cook despite her reminders.

112. It appears that Mr Fitzgerald's accountant sent a statement to Mrs Cook in May 2016 [AB2 page 7]. There is no copy of the accompanying letter in the bundles but Mr Fitzgerald has provided a letter misleadingly dated 13rd June 2016 (sic) from his accountant [AB2, page 9] and has also produced a copy of an email from Mrs Cook dated 12 May 2016. In that email she acknowledged receipt of "his letter" including accounts and reminded him that she was still waiting for confirmation that the work to the chimney, which had needed immediate attention when she bought the flat, had been done and she said that it would be cost effective to attend to it whilst the scaffolding is in place, "according to my father, the tenant, it is still erected" [AB2 page 8].

113. Mrs Cook referred the Tribunal to an email from the Applicant dated 10 September 2015 in which Mr Fitzgerald accepted that cleaning had not been carried to the extent which the cleaner normally cleans despite her being invoiced for this service [AB2 page 6]. A reduced charge was agreed for a six-month period and this is referred to on the service charge statement for 2013 – 2016 [AB2 page 58]. The Tribunal noted that this is a different version of the service charge statement at AB2 page 7, and the figures are different with an insurance charge added for 2013/2014 plus increases in the amount demanded for ground rent, building cleaning and carpet cleaning and an additional accountants fee. An adjustment to the cleaning charge was made only in respect of Flat 2, but the total charge was higher than the amount shown on the first version of the statement

because Mrs Cook was charged for services for three years whereas the other version of the statement referred to two years.

114. Mrs Cook had also requested a copy of the invoice for carpet cleaning, which she was prepared to pay. She said that she had not been consulted about the maintenance works and that the only communication from the Applicant which referred to these works was an email dated 10 September 2015 in which he had referred to decoration due to be carried out in spring 2016 [AB2 page 6]. She subsequently advised him that in the absence of consultation, she was legally obliged to contribute only £250 towards the costs of the work.

115. Her email dated 13 June 2016 stated: - "it is not reasonable for you to conduct works on this level without consultation and then make a demand for a substantial sum". She agreed to pay the fire alarm maintenance payment and the accountants fee, but disputed the administration charge which she said was unreasonable because:- "I have one letter from you to date and several emails in the two years I have owned the property. Although I accept that you have had administration costs in relation to the organisation of works etc, I have not benefitted from this by being involved in this process or furnishing me with copies of quotes and copies of invoices etc. It is unreasonable. I have been given in the two years I have owned the flat, one set of accounts in the post, dated 3rd May 2016 and have already been billed for an accountants fee which I am prepared to pay. Therefore, I am not prepared to pay any further administration fees" [AB2 Pages 10 – 11].

116. Mrs Cook also referred to works apparently carried out to the chimney and asked for details to be confirmed to her lender. She also said that she understood from her father (who had spoken to Mr Abbott the tenant) that Mr Fitzgerald's son had attempted to carry out remedial works to make good the damage caused by water ingress but had said he was not a decorator by trade so permission was refused. She requested that the damage should be made good by "a decorator by trade".

117. Acknowledging that Mr Fitzgerald's year had been a difficult one, she stated that she wanted annual invoices as it was better for her in terms of cashflow. She expressed the wish that they could reach amicable agreement on the sums he claimed to be due and agreed to transfer the sums not disputed together with £250 for the works, "in good faith". A second email also dated 13 June 2016 records that Mrs Cook would make a BACS transfer of the following sums: -

• Insurance 2014-15	55.39
• Insurance 2015-16	57.79
• Ground rent 2014-16	100.00
• Building cleaning 2014-16	112.50
• Building maintenance 2016	250.00
• Fire alarms April 2016	49.05
• Accountants fee April 2016	75.00
Total	699.73

118. She added "for the court's attention", on her defence, that ground rent, carpet cleaning and fire alarm testing were paid. Her requests for insurance documentation and carpet cleaning pending payment were not forthcoming. She said she relied on section 22 to "Exercise the right of full information". Nothing has been received for this period to date.

119. She then copied an email dated 20 December 2019 to the Applicant, to the Court, in response to "his first and only communication for period 2016, 2017, 2018 & 2019 dated 3 December 2019 [AB2 page 16]. In that email Mrs Cook told the Applicant she had transferred £493 to him on 20 December 2019 [AB2 pages 17 and 18].

120. Mrs Cook said that she received no further communication from the Applicant. In her defence to the County Court claim she recorded that the flat above which covers two floors and is 50% of the property, is owned by the Applicant's ex-wife and houses the ex-wife, son and grandchildren. The ex-wife Gina is the cleaner of the communal areas. She and Miss Beardshall were not consulted either about the cleaning service or the charge and both dispute that the service has been carried out to a level to justify the charge. Despite more than one written request to Mr Fitzgerald to attend to the chimney and the damage caused by water ingress into her flat, this has not been carried out [CB2 Page 9].

121. During the Hearing, she asked Mr Fitzgerald why he had never produced the insurance schedule to her. She said that whenever she had requested invoices and information about the charges from him, he omitted to produce anything. He said that she had not paid the ground rent which she denied. She told the Tribunal she has always paid the ground rent demanded.

122. Mrs Cook also asked Mr Fitzgerald if he had obtained competitive quotes for the building insurance. He did not answer her question. He had accused her of stating that the premium was too high and suggested indirectly that neither she, nor the tenant of the top flat wanted to increase the level of cover.

123. Mrs Cook said that the building decoration work recently carried out is of poor quality. The Applicant denied this. He said he had requested that the Court authorise a forensic examination of the work carried out. He insisted that his photographs in the bundle demonstrate that the property is in much better condition than those on either side of it. He also said that the external decoration was complete.

The Lease and the Law

124. The Respondents are registered as proprietors of the leasehold Flats 1 and 2, 19 Oxford Grove Ilfracombe. Miss Beardshall is the registered proprietor of Flat 1, which property was demised by a lease dated 21 September 1988 made between Gerald Terrance Fitzgerald (1) and Alwyn Roy McMeechan (2) for a term of 99 years from 24 June 1988. Her title is registered under title number DN250319. Mrs Cook is the registered proprietor of Flat 2 which property was demised by a lease dated 15 February 2013 made between Gerald Terrance Fitzgerald (1) Gavin

Matthew Deane and Joanne Mary Deane for a term of 99 years from 15 February 2013. Her title is registered at the Land Registry with title number DN632070. Note 1 to paragraph 2 of the Property Register for that title states "The original lease dated 22 September 1988 referred to in the above lease was formerly registered under DN248231". Both leases reserved a ground rent of £50 per annum payable in advance on the first January in each year.

125. Copies of the two 1988 leases of Flats 1 and 2 are contained in Bundles CB1 and CB2 and AB1 and AB2. The Tribunal has not been provided with a copy of the current lease of Flat 2. Neither the Applicant nor Mrs Cook submitted that the current 2013 lease of Flat 2 alters the landlord and tenant obligations to which these proceedings relate. None of the parties suggest that there is any material difference in the leases of the two flats regarding their respective obligations as lessor and lessee.

126. In this decision all references to the Lease are to the Lease of Flat 1, [AB1 page 43]. The "demised premises" are described in the First Schedule. The "maintenance year" is a period commencing on 1 January in each year and ending on 31 December. The "maintenance charge" is the amounts from time to time payable under clause 2 of the Fifth Schedule. The "common parts" means all those parts of the property not exclusively enjoyed by the lease licence or otherwise by only one of the occupiers of the property. The "retained property" means those parts of the property for the time being retained by the Lessor and those parts of the property which the Lessor covenants in sub clause (1a) to (1c) of the Sixth Schedule to repair and maintain.

127. The First Schedule describes the demised premises as including: -

- internal walls bounding the flat and the doors door frames windows and window frames fitted in such walls and the glass fitted in such window frames,
- any non-load bearing walls within the flat and the doors door frames windows fitted in such walls the coverings of the ceilings and the floors all conduits except those belonging to any public utility supply authorities or corporation or smoke detector alarm system and
- all fixtures and fittings in or about the demised premises (except Tenant fixtures and fittings)
- the stairs leading from the ground floor to the basement.

Any parts of the property save for conduits expressly included which lie above the surfaces of the ceilings or below the floor surfaces, any main timbers or structural parts and conduits which do not exclusively serve the flat are excluded unless these are walls and doors windows window frames which are expressly included or decorative or plastered surfaces.

128. The Fifth Schedule [AB1 page 50] contains the lessee covenants which oblige the lessee to pay a maintenance charge being 25% of the expenses which the lessor shall reasonably and properly incur in each maintenance year and which are authorised by the Eighth Schedule (and can include provision for future expenditure) the amount of which to be certified if

required by the lessee by the lessor's accountant as soon as conveniently possible after the expiry of each maintenance year. A payment on account is to be made by the Lessee on 1 July 1988 and in every maintenance year of £100 or one half of the maintenance charge for the immediately preceding year whichever is more.

129. The Sixth Schedule [AB1 page 57] contains the lessor's covenants. Paragraph 1 states that subject to payments by the lessee of the rents and maintenance charge and substantial compliance with the lessee's covenants agreements and obligations the lessor will keep in good repair and decoration (which includes renewal and improvement): -

- the structure of the property including roof foundations walls whether external or internal which are not included in the demised premises, timbers joints and beams of the floor's ceilings and roof and chimney stacks gutters rainwater and soil pipes
- The conduits not exclusively serving the demised premises (unless these belong to the public utility supply authority)
- The common parts

130. The lessor also covenants to decorate the exterior the property including any part the lessee is prohibited from painting as often as necessary. The lessor is entitled to employ such maintenance contractors as he considers necessary, but he must act reasonably.

131. Paragraph 7 states that the lessor must hold the maintenance charge and maintenance fund upon trust to expend the same in subsequent years pursuant to the Eighth Schedule.

132. Paragraph 8 states that the lessor must keep the property including the demised premises insured to its full insurable value against loss or damage by fire and such other of the usual comprehensive risks as the lessor may in its discretion think fit and in the event of damage or destruction reinstate the property.

133. Paragraph 4 of the Seventh Schedule give the Lessor power without an obligation to incur the expenses set out in the Eighth Schedule.

134. The Eighth Schedule [AB1 p62] is titled "Costs and expenses upon the Maintenance Fund". It lists, amongst other things, costs incurred by the lessor in complying with its obligations of the Sixth Schedule, the cost of any additional insurance properly required to be effected in connection with the property, the costs of cleaning decorating and lighting the passageways and staircases and other parts of the property used by the lessee in common with others and of keeping those parts of the property in good repair and condition, the cost of employing a managing agent or surveyor to manage the property and collect rents and maintenance charges, costs of auditing the accounts of the maintenance fund sums which the lessor or his managing agents consider desirable for the purpose of accumulating a reserve subject to a limitation linked to actual expenditure in the previous year.

135. The jurisdiction of the Tribunal to consider the Applicant's Claims, transferred from the County Court, is contained for the most part in the Landlord and Tenant Act 1985 (LTA 1985).

136. Section 27A (1) enables the Tribunal to determine whether a service charge is payable, by whom it is payable and the amount which is payable and the date at or by which it is payable. It may also determine whether if costs were to be incurred, a service charge would be payable (Section 27A (3)). No application can be made to the Tribunal under sub sections (1) or (3) if a matter has been agreed or admitted by a tenant but the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment (Subsections 3 and 4).

137. Section 19 provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred and 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.

138. Section 18 provides that service charge means an amount payable by a tenant payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management.

139. Section 20B(1) provides that if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then the Tenant is not liable to pay those service charges. However sub-section (2) disapplies the section if the tenant had been notified that the costs had been incurred and he would be subsequently required under the terms of his lease to contribute.

140. Section 21B requires a demand for the payment of a service charge to be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges and provides that a tenant may withhold payment of a service charge which has been demanded from him if the summary of rights and obligations was not provided with the demand.

141. A tenant can request information regarding service charges, including accounts and receipts where a summary of relevant costs has been provided. (Sections 21 and 22).

142. Section 20 provides that where the section applies to qualifying works, relevant contributions of tenants are limited unless consultation requirements have been complied with in relation to those works or dispensed with by or on appeal from the appropriate tribunal. The current statutory limit is £250 per leaseholder per year. Section 20(3) and Clause 6 of The Service Charges (Consultation Requirements) (England) Regulations 200. SI 2003 No. 1987.

143. Paragraph 2 of the Schedule to the Act provides that where a service charge is payable by the tenant of a dwelling directly or indirectly for insurance, the tenant may by written notice require the landlord to supply him with a

written summary of the insurance for the time being effected in relation to the dwelling and Paragraph 3 provide that the tenant may require the landlord to afford him reasonable facilities to inspect the policy and obtain copies of it.

144. The following two sections of The Landlord and Tenant Act 1987 are also relevant. Where tenants of two or more dwellings may be required to contribute to the same costs, sums paid by way of relevant service charges shall be held as a fund on trust for the persons who are contributing tenants (Section 42).

145. Where any written demand is given to a Tenant, the demand must contain the name and address of the landlord and if it does not contain that information the relevant amount shall be treated for all purposes as not being due from the tenant until that information is furnished (Section 47).

146. Extracts from the legislation are annexed in the Appendix to this decision.

FTT - Decision and Reasons

147. The first matter the Tribunal considered is whether the service costs demanded by the Applicant are service charges within the definition of service charges in the Lease.

148. Neither Respondent suggested that their refusal to pay the disputed sums was because the service charges could not be recharged to them under the terms of the Lease. They have both however, stated that some of the charges were time limited because these were incurred more than 18 months before the date of the demand and that there was no consultation with regard to the external redecoration.

149. The disputed items fall under the headings in the two service charge statements prepared by the Applicant's accountant in 2016 and 2019 and are: -

- Insurance
- Cleaning (common hallways etc and carpets)
- External building decoration – 2016 and 2019
- Fire alarm maintenance
- Accountants Fee
- Administration charge

150. Paragraph 8 of the Sixth Schedule to the Lease requires the Lessor to insure the building and the costs which he incurs in so doing are specifically included in the definition of "Costs and expenses within the Maintenance Fund", as is the costs of complying with statutory requirements (which would include fire alarm maintenance). The costs of auditing the accounts of the Maintenance Fund is specifically mentioned.

151. The costs of cleaning decorating and lighting the passageways and staircases (as well as other common parts) of the property enjoyed or used by the lessee in common with others is also included (Eighth Schedule).

152. The Lessor covenants to keep the retained property in good repair and decoration, (Sixth Schedule) and his costs in complying with those

covenants are costs and expenses upon the Maintenance Fund and listed in the Eighth Schedule.

153. There is no mention in the Lease of the Lessor being able to recover an administration fee but the Lease enables a lessor to recover the costs of employing a managing agent or surveyor to manage the property and to collect the rents and maintenance (Paragraph 7 Eighth Schedule). The Applicant does not claim to have employed an agent and although he has described Mrs Leech as his house agent, he has not provided any evidence that he paid her a fee for managing the property or indeed any evidence that she undertook any services, other than cleaning the internal passageways and stairs and generally liaising with him save that her invoice referred to cleaning and management. The Tribunal finds that the Applicant is not entitled to recover a 5% administration fee. The evidence of both Respondents, coupled with the fact that only two service charge demands were issued for services provided during some 6 years, is indicative of a lack of administration. Even if the Tribunal had found that the administration fee was recoverable, it is not appropriate to apply it to the ground rent and other disputed amounts.

154. Furthermore, no evidence was supplied by the Applicant regarding the change of the service charge year which the Lease provided would run from January to December. Neither has the Applicant demanded service charges in accordance with the provisions of the Fifth Schedule to the Lease. (See paragraph 128 above).

2016 Demand

155. The 2016 demand relates only to the claim against Mrs Cook since it is apparently in respect of service charges predating Miss Beardshall's ownership of Flat 1. (She purchased Flat 1 in July 2016). Service charges were demanded from Mrs Cook by the Applicant's accountant in 2016. The demand is for a period from 2013 to 2016. A letter dated 13rd June 2016, (sic), refers to an earlier letter dated 3 May 2016. No copy of that letter, which apparently accompanied the demand, has been produced but Mrs Cook acknowledged receipt of the letter and statement in an email to the Applicant dated 12 May 2016 [AB2 page 8]. The demand was for £2,488.21 itemised as insurance, ground rent, building cleaning, carpet cleaning, building maintenance works, fire alarm maintenance, accountant's fee and included a 5% administration fee charged on both the service charges and the ground rent. The demand includes insurance for a two-year period 2014/15 and 2015/16 and cleaning for two years. It was not clear to the Tribunal if the years referred to run from January to December or from July to June.

156. The demand was not accompanied by a summary of the rights and obligations of the tenant. It does not contain the Landlord's full name and address. There is no consistency in the way Mr Fitzgerald is described on the accountant's letters. Any supporting documents and appendices originally enclosed with the demands were not included in the bundles.

157. Mrs Cook challenged the sums demanded in her email dated 13 June 2016, [AB2 pages 10 -11]: In that email: -

- She requested a reduction in the cleaning bill from £150 to £112.50.

- She agreed carpet cleaning charge but requested sight of the invoice.
- She stated that there had been no consultation regarding the building maintenance (of which her share was £1,845) and stated she was not legally obliged to pay more than £250.
- She agreed to pay the accountants fee and the fire alarm maintenance.
- She refused to pay the administration fee.

158. She also reminded Mr Fitzgerald that she had been chasing him for two years for an invoice and had only received one set of "accounts". She said that she would pay him for those charges she was not disputing and sent him £699.73, which amount was broken down in her email dated 13 June 2016 [AB2 page 12].

159. Mrs Cook has accepted she is liable to pay part of the sum which Mr Fitzgerald demanded as service charges. This Tribunal has no jurisdiction in respect of any amount agreed or admitted by the Tenant (Section 27(4) LTA, see paragraph 136 above). It can only determine whether Mrs Cook is liable to pay the outstanding balance of the service charges demanded.

160. The Tribunal determines that the 2016 demand issued by Mr Fitzgerald's accountant was not a valid demand for the following reasons. It is not clear on the face of the statement what periods it covers; it does not comply with current legislation; some of the services had been carried out more than 18 months ago; there is no evidence that the Landlord's name and address was endorsed on the demand or the accompanying letter provided; there was no prior consultation about building maintenance works and no evidence that a Summary of the Tenants' Rights and Obligations accompanied the demand. Mr Fitzgerald told the Tribunal that he was not obliged to comply with Landlord and Tenant Act legislation.

161. The Respondent has included a second version of the 2016 demand in his bundle [page 58 of AB2]. This shows the sum as due from Mrs Cook as £2,717.92 The insurance includes an additional amount for 2013/2014 plus increases in the amounts demanded for ground rent, building cleaning and carpet cleaning. An additional accountant's fee of £60 has been added with a footnote, "as agreed and instructed by Mr T Fitzgerald (Freeholder) on 17/06/2016". The revised 5% administration fee was applied to the increased total. However, the defects which made the earlier demand invalid have not been corrected and the Tribunal therefore determines that the second 2016 demand was not a valid demand for service charges.

162. Even if either of the 2016 demands had been valid demands, the charge for the building redecoration was not recoverable because there had been no prior consultation with the lessees.

163. Furthermore, all charges for cleaning the passageway and stairs, which relate to costs incurred more than 18 months prior to the date of the demand are not valid. There is no copy of an invoice for those cleaning costs in the bundles or any indication, save for the years shown on the statement, of the periods to which the charges relate. Mrs Cook submitted no evidence that she requested a copy of an invoice for the cleaning costs

but she questioned whether the cleaning had been carried out regularly and Mr Fitzgerald had agreed to reduce the amount he had demanded from her. It is now more than three years since the 2016 demands were issued so the Applicant cannot reissue the demand.

164. Mrs Cook paid the Applicant £699.73 in 2016. The Tribunal determines that that she is not liable to pay the Applicant the balance of the amount demanded in respect of the services referred to on the **2016** statement of **£1,749.10.**

2019 Demand

165. Mr Fitzgerald's evidence stated that this service charge demand was sent by his accountant separately to both Respondents with a letter dated 23 August 2019. Miss Beardshall and Mrs Cook both denied receiving the demand in August 2019. The Statement is headed 19 Oxford Grove, Ilfracombe Service Charge Statement 1st July 2016 to 31st December 2019 [AB1 page 89].

166. The Tribunal has been provided with no evidence that a summary of the tenants' rights and obligations was enclosed with the 2019 demand. In reliance on the written evidence in the bundle and the oral evidence of the parties at the Hearing, the Tribunal is satisfied that it was not. Mr Fitzgerald's name and address are not shown on the 2019 demand or on the accountant's letter provided with the demand. Miss Beardshall told the Tribunal she did not receive the demand, which was then sent by Mr Fitzgerald to her lender NatWest. Mrs Cook eventually received the demand in December 2019. She had changed her address and it was not disputed that the earlier correspondence was sent to her previous address.

167. It is not clear whether the insurance and building cleaning charges overlap charges already demanded by the 2016 statement. (See paragraph 155 above). Miss Beardshall would not have been able to cross check this as it predates her ownership. The amount demanded from Mrs Cook on the 2016 statement for insurance for 2015/2016 was a share of £231.15. The amount demanded from Mrs Cook for insurance on the 2019 statement for six months in 2016 (from 1 July 2016) was a share of £261.16. This suggests that the annual insurance premium paid for 2016 was £492.31.

168. Mrs Cook paid £493 (of which £150 was ground rent) [AB2 page 18] towards the amount demanded from her. Mrs Cook has accepted liability for payment of that part of the service charges demanded by Mr Fitzgerald.

169. Miss Beardshall referred the demand to her solicitor and following receipt of advice from them paid £927.59 towards the amount demanded. Miss Beardshall has accepted liability for that part of the services charges demanded by Mr Fitzgerald.

170. This Tribunal has no jurisdiction in respect of any amount agreed or admitted by the Tenant (Section 27(4) LTA, see paragraph 136 above) therefore it can only determine whether or not the Respondents have any liability to pay the balance of the outstanding service charges demanded by Mr Fitzgerald in 2019.

171. As was the case with the 2016 demand, some of the sums demanded on the 2019 demand were in respect of services charges incurred more than 18 months prior to the date of the demand.

172. The Tribunal determines that the 2019 demand is not a valid demand for service charges for the following reasons. It duplicated some services charges already demanded in 2016; both statements include cleaning during July to December 2016. It was not accompanied by a summary of rights and obligations. It did not contain details of the Landlord's name and address. It sought to charge the Respondents for services which had been undertaken more than 18 months prior to the date of the demand. Additionally, the Applicant sought to charge the Respondents for a contribution towards major works in respect of which there had been no prior consultation.

173. Despite extensive correspondence exchanged between both Respondents and the Applicant, and the Tribunal Directions, the Applicant only disclosed evidence of the building insurance for one year, 2016/2017. He has provided a copy of part of a renewal schedule containing limited information about the insurance cover without information of full terms of the policy and exclusions [AB1 page 65]. That schedule shows a period of cover between 28 December 2016 and 27 December 2017. The Tribunal has seen no evidence that this information was ever disclosed to either Respondent prior to being included in AB1.

174. Contrary to Mr Fitzgerald's evidence and the information contained in his emails to Miss Beardshall, the building insurance reinstatement cover was £412,000. There is no evidence that he informed either of the Respondents of that figure. In fact, he told Miss Beardshall in March of 2017 that the cover had been increased to £400,000 [AB1 page 6] which is different from the amount shown in the renewal schedule.

175. Mrs Cook's evidence, which the Tribunal accept, was that she had consistently refused to pay towards Mr Fitzgerald's insurance because he failed to provide her with the information about the policy and the amount of cover which she had requested many times. Furthermore, he told Miss Beardshall it was not possible for her to make a claim when a leaking pipe caused damage to the inside of her flat. As a result of his refusal to disclose information, which he is legally obliged to provide, both Respondents obtained and paid for contingency insurance cover because neither was confident that Mr Fitzgerald had any buildings insurance cover in place. Mr Fitzgerald refused to make good damage caused to Mrs Cooks' flat by the leaking pipe or to claim upon the buildings insurance to defray the costs of that repair. The letters disclosed in AB2 pages 24-27 merely provide evidence of premium payments made to Direct Line and showed that the payments due between August and November 2019 were outstanding. The Tribunal has not seen evidence as to whether these payments were subsequently made or whether buildings insurance is currently held by Mr Fitzgerald.

176. For all the reasons set out above, the Tribunal determines that:-

- Miss Beardshall is not liable at the date of this decision to pay the Applicant **£2,805.60** being the service charges demanded from her

in 2019. That sum is calculated by deducting (£3,640) (rent) from Applicant's claim of £6,395.60, which he admitted was not a service charge and adding £50 which the Applicant claimed he had incorrectly deducted from the amount shown on the 2019 statement (see paragraph 59 above).

- Mrs Cook is not liable at the date of this decision to pay the Applicant to pay **£2,280.60** being the service charges demanded from her **in 2019**. It has already determined that she is not liable to pay the Applicant **£1,749.10** being the sum carried forward from the **2016** statement (see paragraph 176). Adding £1,749.10 to the amount shown on the 2019 statement (£2,773.60) equals £4,522.70 from which the amount paid by Mrs Cook (£493) was deducted which totals **£4,029.70.** (70 pence more than the Applicant claimed).

In each case these are the amounts the Applicant demanded in 2016 and 2019 less the amounts paid by each Respondent. It is noted that the amount shown as outstanding from 2016 on the 2019 statement related to the first 2016 statement [AB2 page 7].

177. Since the Tribunal has found that the Applicant has not complied with the consultation requirements in relation to the building maintenance works it would be possible for Mr Fitzgerald to apply to the Tribunal for dispensation from the obligation to consult the leaseholders. Such an application can be made under section 20ZA of the LTA 1985.

178. Judge Huskinson stated in Warrior Quay Management Company Ltd & Another v. Joachim [2008] EW Lands LRX 42 that where the Tribunal identifies absence of consultation as the reason that a service charge may not be recoverable by a landlord particularly if he is not professionally represented it should ask the landlord if he wishes to apply for dispensation. The Tribunal did not raise this during the Hearing but it has considered whether such an application would be likely to succeed and concluded that it is unlikely for the following reasons.

179. Miss Beardshall has already obtained and included in her bundle [RB1 pages 9–11], alternative quotations for the redecoration work recently undertaken. These quotations are for significantly less than the amount shown on the Applicant's quote**.** She also suggested that the decorator who the Applicant used is not unconnected with the Landlord. The Regulations provide that at least one estimate for works requiring consultation must be that of a person wholly unconnected with the Landlord [Paragraph 11(6) of Part 2 of Schedule 4].

180. It has heard submissions that both Respondents were critical of the quality of the recent redecoration. Photographic evidence supplied by both parties is undated which made it impossible for the Tribunal to consider their respective submissions about the quality of the redecoration recently undertaken.

181. The Tribunal noted that the figure which the Applicant stated he had spent on redecoration in the 2016 demand was £7,380. There is no copy of an invoice or estimate in the bundles. The amount shown in the 2019 demand was £5,996.00. The quote from Tyrone Sanders included sums for the removal of a fridge from the flat roof and works to the backyard and rear lane which neither Respondent has any right to use.

182. Both Respondents having accepted that some decoration has been done, have already paid the Applicant £250 towards the costs of redecoration. Mrs Cook has also notified Mr Fitzgerald that it should not be necessary to repaint the external walls every three years if appropriate paint is used, and the standard of works carried out was satisfactory (see paragraph 103 above).

Costs in the FTT

183. Both Respondents completed an application for an order to be made under paragraph 5 of Schedule 11 of the CLARA.

184. The FTT makes an order extinguishing any liability for either of the Defendants to pay a particular administration charge in respect of litigation costs incurred in the County Court or the FTT by the Applicant in relation to both of the Claimants' claims

County Court – issue and Decision

185. Judge C A Rai, sitting alone as a judge of the County Court exercising the discretion of a District Judge heard those matters that fall within the jurisdiction of the Court.

Claim including Interest

186. The FTT determined that neither of the Defendants Miss Beardshall or Mrs Cook are liable to pay the amounts claimed as service charges and the Court dismisses both Claims.

Costs

187. The Claimant has sought to recover his court costs and submitted a statement of costs relating to his preparation of the Tribunal hearing. He has not pleaded that these are contractual costs.

188. Miss Beardshall has provided details of the legal costs she has incurred in defending the claim made against her by the Claimant. These costs are limited to the costs of the advice provided by her solicitor prior to the submission of her defence to the County Court Claim.

189. The Court proceeded to deal with costs under the principles set out in CPR 27.4. The claims were allocated to the Small Claims Track. The Court may not order one party to pay a sum to another party save in respect of the fixed costs relating to the claim.

190. The Court makes no order in respect of costs. The Claimant was not successful with his substantive Claim. Miss Beardsall's costs did not fall within the definition of fixed costs.

Name: Judge C A Rai **Date: 4 December 2020**

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.

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

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

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

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court
An application for permission to appeal may be made to the Judge who dealt with your case when the decision is handed down. Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal. Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT
You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court

Appendix - Extracts from relevant legislation referred to in this Decision

Landlord and Tenant Act 1985

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.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) [the appropriate tribunal].

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

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

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

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

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

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

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

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of

the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

20ZA Consultation requirements: supplementary]

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

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

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

(5) Regulations under subsection (4) may in particular include provision

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

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

20C Limitation of service charges: costs of proceedings

[(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court[, residential property tribunal] or leasehold valuation tribunal [or the First-tier Tribunal], or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to [the county court];
[(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;]
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
[(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;]
(c) in the case of proceedings before the [Upper Tribunal], to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to [the county court].

21B Notice to accompany demands for service charges

[(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
(5) Regulations under subsection (2) may make different provision for different purposes.
(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

22 Request to inspect supporting accounts etc

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.
(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—
(a) for inspecting the accounts, receipts and other documents supporting the summary, and
(b) for taking copies or extracts from them.
(3) A request under this section is duly served on the landlord if it is served on—
(a) an agent of the landlord named as such in the rent book or similar document, or
(b) the person who receives the rent on behalf of the landlord;
and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

[(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

[(1) A tenant may by notice in writing require the landlord—

(a) to afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the matters which must be dealt with in a statement of account required to be supplied to him under [information required to be provided to him by virtue of] section 21 and for taking copies of or extracts from them, or

(b) to take copies of or extracts from any such accounts, receipts or other documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).

(2) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).

(3) A notice under this section may not be served after the end of the period of six months beginning with the date by which the tenant is required to be supplied with the statement of account under [provided with the information concerned by virtue of] section 21.

(4) But if—

(a) the statement of account [information] is not supplied [provided] to the tenant on or before that date, or

(b) the statement of account [information] so supplied [provided] does not conform exactly or substantially with the requirements prescribed by regulations under section 21(4) [21],

the six month period mentioned in subsection (3) does not begin until any later date on which the statement of account [information] (conforming exactly or substantially with those requirements) is supplied [provided] to him.

(5) A notice under this section is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent on behalf of the landlord;

and a person on whom such a notice is so served must forward it as soon as may be to the landlord.

(6) The landlord must comply with a requirement imposed by a notice under this section within the period of twenty-one days beginning with the day on which he receives the notice.

(7) To the extent that a notice under this section requires the landlord to afford facilities for inspecting documents—

(a) he must do so free of charge, but

(b) he may treat as part of his costs of management any costs incurred by him in doing so.
(8) The landlord may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this section.

27A Liability to pay service charges: jurisdiction

[(1) An application may be made to [the appropriate tribunal] for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to [the appropriate tribunal] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.
(4) No application under subsection (1) or (3) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
(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.

SCHEDULE
RIGHTS OF TENANTS WITH RESPECT TO INSURANCE

1

In this Schedule—
"landlord", in relation to a tenant by whom a service charge is payable which includes an amount payable directly or indirectly for insurance, includes any person who has a right to enforce payment of that service charge;

“relevant policy”, in relation to a dwelling, means any policy of insurance under which the dwelling is insured (being, in the case of a flat, a policy covering the building containing it); and
“tenant” includes a statutory tenant.
. . . Summary of insurance cover
2

(1) Where a service charge is payable by the tenant of a dwelling which consists of or includes an amount payable directly or indirectly for insurance, the tenant may [by notice in writing require the landlord] to supply by him with a written summary of the insurance for the time being effected in relation to the dwelling.
(2) If the tenant is represented by a recognised tenants' association and he consents, the [notice may be served] by the secretary of the association instead of by the tenant and may then be for the supply of the summary to the secretary.
(3) A [notice under this paragraph is duly] served on the landlord if it is served on—
(a) an agent of the landlord named as such in the rent book or similar document, or
(b) the person who receives the rent on behalf of the landlord;
and a person on [whom such a notice] is so served shall forward it as soon as may be to the landlord.
(4) The landlord shall, within [the period of twenty-one days beginning with the day on which he receives the notice,] comply with it by supplying to the tenant or the secretary of the recognised tenants' association (as the case may require) such a summary as is mentioned in sub-paragraph (1), which shall include—
(a) the insured amount or amounts under any relevant policy, and
(b) the name of the insurer under any such policy, and
(c) the risks in respect of which the dwelling or (as the case may be) the building containing it is insured under any such policy.
(5) In sub-paragraph (4)(a) “the insured amount or amounts”, in relation to a relevant policy, means—
(a) in the case of a dwelling other than a flat, the amount for which the dwelling is insured under the policy; and
(b) in the case of a flat, the amount for which the building containing it is insured under the policy and, if specified in the policy, the amount for which the flat is insured under it.
(6) The landlord shall be taken to have complied with the [notice] if, within the period mentioned in sub-paragraph (4), he instead supplies to the tenant or the secretary (as the case may require) a copy of every relevant policy.
(7) In a case where two or more buildings are insured under any relevant policy, the summary or copy supplied under sub-paragraph (4) or (6) so far as relating to that policy need only be of such parts of the policy as relate—
(a) to the dwelling, and
(b) if the dwelling is a flat, to the building containing it.
Inspection of insurance policy etc
3
(1) Where a service charge is payable by the tenant of a dwelling which consists of or includes an amount payable directly or indirectly for insurance, the tenant may by notice in writing require the landlord—

(a) to afford him reasonable facilities for inspecting any relevant policy or associated documents and for taking copies of or extracts from them, or
(b) to take copies of or extracts from any such policy or documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
(2) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).
(3) A notice under this paragraph is duly served on the landlord if it is served on—
(a) an agent of the landlord named as such in the rent book or similar document, or
(b) the person who receives the rent on behalf of the landlord;
and a person on whom such a notice is so served shall forward it as soon as may be to the landlord.
(4) The landlord shall comply with a requirement imposed by a notice under this paragraph within the period of twenty-one days beginning with the day on which he receives the notice.
(5) To the extent that a notice under this paragraph requires the landlord to afford facilities for inspecting documents—
(a) he shall do so free of charge, but
(b) he may treat as part of his costs of management any costs incurred by him in doing so.
(6) The landlord may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this paragraph.
(7) In this paragraph—
"relevant policy" includes a policy of insurance under which the dwelling was insured for the period of insurance immediately preceding that current when the notice is served (being, in the case of a flat, a policy covering the building containing it), and
"associated documents" means accounts, receipts or other documents which provide evidence of payment of any premiums due under a relevant policy in respect of the period of insurance which is current when the notice is served or the period of insurance immediately preceding that period.]

Landlord and Tenant Act 1987

42 Service charge contributions to be held in trust

(1) This section applies where the tenants of two or more dwellings may be required under the terms of their leases to contribute to the same costs[, or the tenant of a dwelling may be required under the terms of his lease to contribute to costs to which no other tenant of a dwelling may be required to contribute,] by the payment of service charges; and in this section—
"the contributing tenants" means those tenants [and "the sole contributing tenant" means that tenant];
"the payee" means the landlord or other person to whom any such charges are payable by those tenants[, or that tenant, under the terms of their leases, or his lease];
"relevant service charges" means any such charges;
"service charge" has the meaning given by section 18(1) of the 1985 Act, except that it does not include a service charge payable by the tenant of a dwelling the rent of which is registered under Part IV of the Rent Act 1977,

unless the amount registered is, in pursuance of section 71(4) of that Act, entered as a variable amount;
"tenant" does not include a tenant of an exempt landlord; and
"trust fund" means the fund, or (as the case may be) any of the funds, mentioned in subsection (2) below.
(2) Any sums paid to the payee by the contributing tenants[, or the sole contributing tenant,] by way of relevant service charges*, and any investments representing those sums,* shall (together with any income accruing thereon) be held by the payee either as a single fund or, if he thinks fit, in two or more separate funds.
(3) The payee shall hold any trust fund—
(a) on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable (whether incurred by himself or by any other person), and
(b) subject to that, on trust for the persons who are the contributing tenants for the time being[, or the person who is the sole contributing tenant for the time being].
(4) Subject to subsections (6) to (8), the contributing tenants shall be treated as entitled by virtue of subsection (3)(b) to such shares in the residue of any such fund as are proportionate to their respective liabilities to pay relevant service charges [or the sole contributing tenant shall be treated as so entitled to the residue of any such fund].
(5) *If the Secretary of State by order so provides, any sums standing to the credit of any trust fund may, instead of being invested in any other manner authorised by law, be invested in such manner as may be specified in the order; and any such order may contain such incidental, supplemental or transitional provisions as the Secretary of State considers appropriate in connection with the order.*
(6) On the termination of the lease of [any of the contributing tenants] the tenant shall not be entitled to any part of any trust fund, and (except where subsection (7) applies) any part of any such fund which is attributable to relevant service charges paid under the lease shall accordingly continue to be held on the trusts referred to in subsection (3).
(7) [On the termination of the lease of the last of the contributing tenants, or of the lease of the sole contributing tenant,] any trust fund shall be dissolved as at the date of the termination of the lease, and any assets comprised in the fund immediately before its dissolution shall—
(a) if the payee is the landlord, be retained by him for his own use and benefit, and
(b) in any other case, be transferred to the landlord by the payee.
(8) Subsections (4), (6) and (7) shall have effect in relation to [any of the contributing tenants, or the sole contributing tenant,] subject to any express terms of his lease [(whenever it was granted)] which relate to the distribution, either before or (as the case may be) at the termination of the lease, of amounts attributable to relevant service charges paid under its terms *(whether the lease was granted before or after the commencement of this section)*.
(9) Subject to subsection (8), the provisions of this section shall prevail over the terms of any express or implied trust created by a lease so far as inconsistent with those provisions, other than an express trust so created[, in the case of a lease of any of the contributing tenants,] before the commencement of this section [or, in the case of the lease of the sole

contributing tenant, before the commencement of paragraph 15 of Schedule 10 to the Commonhold and Leasehold Reform Act 2002].

47 Landlord's name and address to be contained in demands for rent etc

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the Landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [or (as the case may be) administration charges] from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Commonhold and Leasehold Reform Act 2002

SCHEDULE 11 Administration Charges

Liability to pay administration charges

5

(1) An application may be made to [the appropriate tribunal] for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

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

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

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

(a) in a particular manner, or

(b) on particular evidence,

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