



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

**Case Reference** : **MAN/32UH/LSC/2018/0036**

**Property** : **34 The Quays, Lincoln, Lincolnshire, LN1  
2XG**

**Applicant  
Represented by** : **Mr Joshua Fernie  
Mr Darren Fernie**

**Respondents (1)** : **Burton Waters Management Company  
Limited (Management Company)**  
**(2)** : **Beal Developments Limited (Landlord)**

**Represented by** : **Mr Hardman, Counsel  
Ms Addison, Wilkin Chapman LLP, solicitors**

**Type of  
Application** : **Service charges, Section 27A and 20C of the  
Landlord and Tenant Act 1985. Paragraph 5A  
of Schedule 11 Commonhold and Leasehold  
Reform Act 2002**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA  
Mr P Mountain**

**Date** : **21 July 2021**

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**DECISION**

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## The background to the application

1. This case comes before the Tribunal by way of an application dated 6 May 2018 from the Applicant, Mr Joshua Fernie, the long leaseholder of a terraced house at 34 The Quays, Lincoln, Lincolnshire, LN1 2XG, "the property". The Applicant made it clear in the application that Mr Darren Fernie, who holds financial power of attorney for the Applicant is authorised to act on the Applicants behalf, (Darren Fernie describes himself as a trouble shooter).
2. The application calls into question payability and reasonableness of service charges for service charge years 2015, 2016, 2017 and 2018. An order under Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 is requested. An order under section 20C of the Landlord and Tenant Act 1985 is also requested.
3. The First Respondent is Burton Waters Management Company Limited, the management company. The second Respondent is Beal Developments Limited, the landlord of the property. Both Respondents are represented by Wilkin Chapman LLP, Solicitors and Mr Hardman of Counsel.
4. The property is contained within a purpose built securely gated marina complex that lies between the Fosdyke canal and the A57 a short distance outside Lincoln. The site has a number of dwellings, that has increased as the site has continued to be developed. It is a complicated service charge structure in that the First Respondent is a Party to the head lease that relates to the part of the site accommodating the Applicant's property, other site head leases and the lease for the property.
5. The result of this interaction of leases is that other occupiers of the estate pay a contribution to the service charge account that relates to the part of the estate that houses the property. In addition to the contributions from other users of the estate there are then some payments into that service charge account for services rendered to occupiers of the complex that are not covered by the services provided as a result of the service charge contribution, thus adding more income into that account. The remaining service charge cost is then divided between the residential occupiers.
6. As such the service charges demanded from the Applicant are as follows:
  - 2015, with 334 residential leaseholders, service charge costs x 0.2205%, being a demand per residential leaseholder for £891.22 (for the full year). The Applicant acquired his lease in this year and has paid the apportioned amount demanded of him.
  - 2016, 348 residential leaseholders, service charge costs x 0.2140%, £904.40 demanded from the Applicant and paid.

- 2017, 361 residential leaseholders, service charge costs x 0.2084%, £916.99 demanded from the Applicant and not paid.
  - 2018, 361 residential leaseholders, service charge costs x 0.2079%, £962.82 demanded from the Applicant and not paid.
7. Deputy Regional Valuer Walsh issued Directions on 6 July 2018. Direction 5 requires the Applicant's statement of case to be "done by means of a schedule or spreadsheet arranged in date order with separate columns to show (a) each disputed item; (b) the reasons why the item is disputed; (c) the amount (if any) the Applicant is willing to pay; and (d) a space for the Respondent's comments on each item."
  8. On 17 August 2018, following an application made by the Applicant the above Directions were amended by a further Direction being made by a Tribunal Judge, the further Direction being, " The Respondent should provide the Applicant with facilities to inspect and copy the relevant invoices and receipts for the years in question."
  9. On 24 August 2018 the Directions were further amended by a letter being sent to the parties, stating, "The Tribunal notes that the Respondent has now confirmed that facilities to inspect and copy relevant invoices and receipts will be made available to the Applicant and that it is the Applicant's intention to have completed this exercise by the end of August 2018. The Tribunal accordingly orders the Applicant to submit an amended statement of case, which must comply with Direction 5, by 21 September 2018."
  10. On 15 October 2018 the Applicant served his amended statement of case (served late) and it is not set out in accordance with Direction 5, in that although it could be described as a schedule it is not in columns. Further, where the Applicant has indicated how much he would be prepared to pay it is consistently indicated as the whole amount is in issue.
  11. On 30 October 2018 both Respondents served a joint application that the cases against them should be struck out.
  12. On 13 November 2018 the Applicant served a response to that application.
  13. On 3 April 2019 the case in relation to the application to strike out was heard at Lincoln County Court. Judge Tonge (sitting alone) declined to strike out the Applicant's case. The Tribunal then considered how best to get this case ready for its final hearing and a Decision relating to the strike out application and Directions were issued. Now that the final Decision has been made, the Decision of 3 April 2019 will be annexed to this Decision as Annex 2. Direction 14 requires that there be a mutual exchange of witness statements by 26 June 2019. At this hearing and subsequently, Wilkin

Chapman solicitors and Mr Hardman have represented the interests of both Respondents.

14. There have been several attempts to list this case for its final hearing, taking into account dates of availability. The listing of the case was made additionally complex by the onset of the Covid-19 pandemic.
15. The case had a final hearing date fixed to commence on 3 February 2020, to last 5 days at Nottingham. The Applicant made an application to vacate this hearing on the basis that he could not be available to attend the hearing. Judge Tonge (considering the written application alone) agreed to vacate the hearing. There followed an application by the Respondents for the Applicant's case to be struck out on the basis that the Tribunal had been misled by the Applicant as to availability in the future for relisting the hearing.
16. Judge Tonge (considering the written application alone on 6 February 2020) declined to strike out the Applicant's case. The Decision of 6 February 2020 will be annexed to this Decision as Annex 3.
17. The Tribunal makes the point that at the Case Management Hearing on 3 April 2019 and on several occasions since then, it has been stated that the Applicant has the benefit of legal advice from a barrister. In such circumstances the Tribunal would not expect to receive many emails from the Applicant. The Applicant has sent 153 emails to the Tribunal office during the currency of this case, 6 May 2018 to 9 July 2021. This has placed an enormous burden upon the Tribunal in dealing with these email communications, some of which were long and complicated. This resulted in Judge Tonge having to issue 7 further Directions (not mere amendments to existing Directions) on 14 July 2019, 17 July 2019, 19 July 2019, 25 July 2019 ( in answer to an application for permission to appeal against earlier Directions that were not subject to appeal at that stage because the case was still at an interlocutory stage), 16 November 2020, 7 December 2020.
18. The last set of Directions are dated 22 December 2020. These Directions will be annexed to this Decision at Annex 4. The Tribunal particularly draws attention to paragraphs 17 and 18 of these Directions. In these paragraphs the Tribunal deals with the Applicant making a misleading representation.
19. In addition to the Directions above, on 10 December 2020 an email was sent to the Applicant, prepared by Judge Tonge, indicating the circumstances in which a witness could be called at a tribunal hearing. This was necessary because it appeared to be the case that despite access to a barristers legal advice, the Applicant simply did not understand the circumstances in which a witness can be asked to give oral evidence.

20. The Parties served separate hearing bundles. The Respondents' served 8 lever arch files of evidence and four large (A 1 size) detailed plans of the 140 acre site that accommodates the property. These are endorsed with the location of issues raised in the application, together with photographs of the site (sent to the members of the Tribunal in late August 2020). The Applicant served a further 2 lever arch files of evidence (sent to the members of the Tribunal in early September 2020). The evidence in these lever arch files will not be dealt with here, but will be referred to in the remainder of the Decision, where necessary. These were served in preparation for a hearing fixed to start in September 2020, along with skeleton arguments on both sides. However, this five day slot was vacated prior to its commencement.
21. The written case involves a Scott Schedule that goes through all 278 areas of dispute between the Parties. The Applicant's summary of his case is contained within the first column of the schedule, the Respondents' in the second column and the Tribunal has utilised a third column to endorse the paragraph number in the Decision that deals with the Scott Schedule item. This is included in the Decision as annex 1.
22. The written evidence contains cross allegations of poor conduct on the part of the Applicant and the Applicant's father Mr Darren Fernie on the one side and of servants of the Respondents on the other. The Tribunal has declared during the Case Management Hearing and on numerous occasions since that it has no jurisdiction over criminal matters (save for contempt of the Tribunal) and that as such the Tribunal will consider whether a service charge can be charged under the terms of the lease and if so, whether it is a reasonable charge or charged within a scale of charges that are reasonable. Where there are allegations of criminal conduct, these should be reported to the police.
23. There are three other cases pending before the Tribunal that involve issues at this site. One is a service charges case, with the Applicant in the present case also being an applicant in the second case. This will cover the same sort of issues as are determined in this case. The second is whether or not to grant recognition to a tenants association at the site that already has a recognised tenants association. The third is an application for the Tribunal to consider appointment of a manager. These cases have all been stayed pending the outcome of the present case. Further, the present case is now very old having commenced three years ago. Further, the case involves cross allegations of poor and/or criminal conduct on going at the site between the Parties or their servants, no doubt causing stress to the recipients. As such the Tribunal has decided that this case must be finalised as soon as possible.
24. The quickest way of listing a final hearing would have been to hold it via the Tribunal video platform, but the Applicant does not have the hardware or

band width to join in such a hearing and refused to permit the Respondents to supply him with both.

25. The Respondents indicated that they would join a video platform hearing and assist the Applicant with the issues that were preventing a video hearing taking place, but the Applicant refused that offer of assistance.
26. The Applicant continued to require a face to face hearing, with all persons present in the hearing room as per the procedure available before the Covid-19 pandemic. The Tribunal determined that this would lead to unacceptable delay.
27. The Tribunal decided that the only issue preventing a video platform hearing was the Applicants lack of video capable equipment and band width. As such the Tribunal decided to arrange for a hybrid hearing with essential personnel in the hearing room and witnesses attending by video. Directions indicated that the Tribunal, now in possession of detailed plans and photographs, were no longer of the opinion that a site visit was necessary.
28. The Tribunal has not been unable to utilise a court or tribunal room capable of dealing with this hybrid hearing, other than use of its own hearing rooms in Manchester, to which the Applicant objected. As a result the Tribunal booked conference facilities at the Double Tree Hilton Hotel in Lincoln and arranged for security staff and tribunal staff to attend.
29. In preparation for the hearing, fixed to commence with a five day listing on 12 July 2021, the Respondents' served a film of a fly over of the estate, recorded with the use of a drone and marking various points on video, pointing out some features of the site.

### **The hearing**

30. The hearing commenced at 10am on Monday 12 July 2021. In addition to the two members of the Tribunal the Applicant and his father Mr Darren Fernie were present, with Mr Hardman (Counsel) and Ms Emma Surphlis on behalf of the Respondents.
31. The Tribunal made it clear that the case has been listed for 5 days because of the fact that there are 278 areas of service charge in issue, some of which are sub-divided. However, the amount that the Applicant challenges is well below £4,000 and proportionality demands that the Tribunal cannot allocate any more hearing time to this case. In so far as hearing evidence is concerned, the case will finish on Friday 16 July 2021 and the Parties must conduct their cases accordingly.

32. The Respondents' had indicated that they wished to make an application that the Tribunal should refuse to permit Mr Darren Fernie to continue to represent his son in the hearing, on the basis that he has been involved in behaviour that is not conducive with his representing his son in the hearing. This was supported by a witness statements from Mr James Hazel (non-practicing solicitor) and the Reverend J. Pavey, both of whom were in video attendance. It was clear to the members of the Tribunal that if this were to go ahead in the manner of a contested issue, that it would involve the making of cross allegations, use up hearing time and set the case off considering issues that the Tribunal would rather not delve in to. As such the Tribunal decided in advance of starting the hearing that it would be fair, just and reasonable to decline to go through all of this evidence, indicating that the Tribunal wanted to concentrate on the issues that it had jurisdiction to determine, being whether service charges are chargeable and reasonable, rather than an argument between the Parties about who has done what during the currency of proceedings. The Tribunal indicating that it would take a dim view of any party, witness or advocate that failed to abide by this decision. As such it was agreed by all Parties that it was not necessary for these two witnesses to be called to give oral evidence and they were released.
33. The Applicant confirmed that he could only attend this five day hearing on Monday and Tuesday, even though the hearing dates had been fixed with his availability in mind and been set for some time.
34. Further, the Applicant confirmed that he did want his father to represent him at this hearing. The Tribunal decided that it would resolve this issue in favour of the Applicant and permit Mr Darren Fernie to continue to represent his son, the Applicant.
35. However, the Tribunal notes that for the two days that the Applicant was present in the Tribunal room, he did not give instructions to his father, nor did Mr Darren Fernie consult the Applicant about anything. The Tribunal has never seen an advocate, trained or not, run a case in this manner. Mr D. Fernie did not help the Applicant to present his case, Mr D. Fernie ran the Applicant's case without consulting the Applicant.
36. The Tribunal then moved to consider the remaining preliminary issues in the case.
37. The Tribunal indicated that it did not think that an inspection of the site accommodating the property was necessary, the Tribunal being in possession of four detailed plans indicating the location of parts on the site that involved issues in the case, a substantial number of photographs (54 in one bundle) and an overview video of the estate taken from a drone, with areas of the site identified on the video. Mr D. Fernie, continued to insist that an inspection was necessary. The Tribunal did not want to decide this

issue against the wishes of the Applicant who's opinion was that an inspection was vital. The Tribunal decided that it would inspect the site on the afternoon of the last day of the hearing and asked Mr Hardman to arrange for this to be accommodated.

38. The Tribunal dealt with a suggested method of dealing with the points in issue as detailed in the Respondents' skeleton argument. Mr Hardman had considered each point and divided them into 15 general headings of issue, suggesting that it would save hearing time if the Tribunal adopted this approach and move from head of issues to head of issues permitting the Applicant to ask questions of Ms Emma Surphlis as each head was dealt with. The Tribunal members having read and discussed this before the start of the hearing indicated that they were generally supportive of this suggestion and asked the Applicant for his submissions. Mr Darren Fernie objected to this idea indicating that this would be unfair to the Applicant as the Tribunal would 'miss things'. The Tribunal could not permit the case to be run in a manner that the Applicant said would be unfair and as such agreed to deal with the case in the manner that Mr Darren Fernie suggested, starting at issue one on the Scott Schedule and going through to the end of the schedule. The Tribunal was influenced in deciding in favour of the Applicant by the fact that Mr Darren Fernie stated that his approach would only take a couple of days to deal with the matters on the Scott Schedule.
39. The next issue was that of witnesses to attend by video link. The Applicant had sent several emails to the Tribunal relating to potential witnesses that the Applicant would like to cross examine. The Tribunal explained again, that it was up to each Party to the case to decide which potential witnesses he or it should take witness statements from. Once a witness statement was served then a witness could be required to attend the Tribunal for cross examination by the opposite Party. If a Party decides not to ask a potential witness for a witness statement then they do not appear to be cross examined. The Party has simply lost their evidence. The Tribunal will not call or issue witness summonses for persons who would be expected to support the Respondents but who have not been asked to provide witness statements. Mr Darren Fernie appeared to accept this.
40. Mr Darren Fernie stated that he wished to call an additional witness, Mr Garry Taylor, who had been employed by the first Respondent as a security officer at the site. The Applicant had not taken a witness statement from Mr Taylor, but believed that Mr Taylor could give evidence helpful to the Applicant. Mr Darren Fernie suggested that a witness summons might be issued. The Tribunal pointed out that it was very late in the proceedings to apply to call an additional witness and that a witness summons is not the appropriate way forward.

41. Mr Hardman objected to this witness being called, submitting that, in addition to this application being made very late, Mr Taylor is a disgruntled ex-employee who has brought a case for unfair dismissal against the First Respondent and is being represented before the Employment Tribunal by Mr D. Fernie. His evidence is therefore likely to be unfairly tainted in favour of the Applicant.
42. The Applicant stated that the witness had only told him a week ago that he is now willing to give evidence in this case.
43. The Tribunal Directed that if this application is to proceed then a witness statement must be obtained from the potential witness. That must then be served on the Respondents and the Tribunal. At that stage the Tribunal would consider whether or not the statement could be admitted into evidence. Mr Taylor must not be brought to the Tribunal room as his attendance might not be required.
44. The Tribunal then considered the issue of the Applicant's request for disclosure of the bank statements relating to the service charge account. The Respondents have these available for production, but object to this on the basis that the accounts show information that they are not permitted to reveal pursuant to data protection and confidentiality. There was a suggestion from the Applicant that similar disclosure had been permitted in another case. The Applicant seeks disclosure of these accounts so that he can check to see if amounts said to be recharged by Banks Long (management agents acting on behalf of the First Respondent) have actually been recharged. The Tribunal decided that it will not order that these accounts be produced at the moment, keeping open the possibility of limited disclosure if necessary during the hearing.
45. The Tribunal in making this decision is mindful that the witness in the Tribunal room, Ms Surphlis, is a chartered surveyor employed by Banks Long, is responsible for oversight of management functions at this site on behalf of the First Respondent and has signed a certificate of truth on her witness statement.
46. Next, the issue of apportionment of contributions to service charge costs on the site and additional disclosure of the factors taken into account during apportionment. The Tribunal points out that it is clear from the Scott Schedule, as completed by the Applicant, that the Applicant did not realise that Burton Waters Moorings Limited were paying a contribution to his service charge account. When the Respondents had completed their representations on the Scott Schedule they had explained that due to apportionment Burton Waters Moorings Limited were paying a contribution. Apportionment was then raised as an issue to be challenged by the Applicant.

47. The background to this is that the site occupies 140 acres and the buildings are built around a purpose built marina complex that before development had been a field. The marina provides moorings for boats that may be owned by residents or non-residents. There are some thirty commercial buildings on the site. There are several different areas with their own sub leases, but the 24 hour a day security CCTV and security patrols benefit the whole site. There are contributions to the First Respondents service charge costs from Burton Waters Moorings Company Limited, the David Lloyd Health Club, a residential elderly persons home and other long leaseholders. Apportionment is calculated by Mr Banks, a chartered surveyor. The Respondents' evidence contains documents that relate to the results of apportionment calculations. They do not detail exactly what Mr Banks took into account in making his determination as to the proper amount to be contributed to the service charge account that is considered by the First Respondent's agents when calculating the charge demanded from the Applicant. The Applicant now seeks to investigate how Mr Banks calculated apportionment of service charges.
48. The Tribunal is mindful of the fact that what is challenged in this case has been set out on a Scott Schedule and that the schedule must be the primary document in ascertaining what is relevant to the Tribunal. The apportionment figures are readily accessible within the Respondents written evidence. There is no specific challenge to apportionment calculations in the Scott Schedule, only challenges to specific invoices. If the Applicant had sought to challenge the calculations that have been made by Mr Banks the Applicant would have to make that clear in the application form and then instruct a chartered surveyor (or similarly qualified expert) to consider this issue. Then the Respondents' would have had to deal with that evidence, either by accepting the evidence of the Applicant's expert or serving expert evidence to support their case. None of this has been done. The Tribunal decides that this application for further disclosure relating to apportionment is rejected as the further disclosure sought has no relevance to this case as it has been brought before the Tribunal.
49. Next, the Applicant is of the opinion that service charges cannot be charged against his service charge account until such time as the particular part of the site is completed and is then 'handed over' to be included into the service charge calculation. The Applicant therefore seeks disclosure of the dates that particular parts of the development were completed and 'handed over'.
50. Mr Hardman submits that when an area is subject to development and is being constructed, providing no benefit to the residents of the estate, all costs are development costs. They are not chargeable as a service charge cost. Once that part of the site is nearing completion and any snagging has been dealt with, its common areas commence to be an asset to the site as a whole. Then service charges attach to the extended common areas by virtue

of the terms of the Applicant's lease. There does not have to be a formal handing over of the developed site, just a recognition that service charges now extend to encompass it.

51. The Tribunal, having considered the terms of the Applicant's sub lease as relied upon by Mr Hardman, accept Mr Hardman's submissions. For clarity, the Tribunal uses the example of a lamp post providing lighting to a common area. Erecting the post and coupling it up to the electricity supply is a development cost, but later repair and maintenance would be a service charge cost (subject to snagging and warranties). As such whether or not there is a schedule of 'hand over dates' of particular parts of the development is irrelevant. Construction is not a service charge cost, repairs are.
52. The Tribunal then commenced to hear evidence in relation to each point on the Scott Schedule as requested by the Applicant. At the end of the normal sitting time of 4.30pm the Tribunal had heard evidence on only 7 points, as such it was obvious that the Applicants assertion that he could deal with the items on the Scott Schedule in a couple of days could not be relied upon. The Tribunal asked the Applicant to make efforts to deal with issues more quickly, suggesting that it was not necessary to keep asking the same question over again. For example it was already obvious to the Tribunal that the management agent, Banks Long had not obtained alternative quotes in most of the points dealt with. The Tribunal suggested that it was able to accept this as a fact in all items on the Scott Schedule, relying on Ms Surphlis to inform the Tribunal if alternative quotes had been obtained in relation to a particular part of the case. On subsequent days Mr Fernie did not adopt this approach.
53. The Tribunal made arrangements for sitting hours to be extended and lunch hours shortened, with the consent and cooperation of all concerned. In doing this the Tribunal was able to provide an additional 5 hours of hearing time during the remaining four days.
54. On the morning of day 2, Mr D. Fernie served a statement from the prospective witness Garry Carl Taylor. All concerned took time to read the statement. Mr Hardman initially continued his objection to this potential witness being accepted as a witness in the case. This was further discussed and Mr Hardman modified his view, agreeing with the Tribunal that the statement could be admitted on the basis that all written statements are admitted, the generality of the statement is agreed, but not necessarily every feature of it.
55. After Mr Hardman had changed his position in relation to the admissibility of the statement, without the witness having to attend the hearing to be cross examined, the Tribunal decided to admit the witness statement, granting the Applicant's application. At that point Mr. D. Fernie submitted

that he must be allowed to call Mr Taylor to give oral evidence. The Tribunal determined that there was no reason to permit this since the witness statement has been admitted into evidence and the Tribunal would consider its content at the appropriate time.

56. During the morning of the second day Mr. D. Fernie took on a less cooperative attitude to the Tribunal and the Respondents. When the Tribunal asked if we could move onto the next point (keeping the limited hearing time in mind) Mr D. Fernie continually said that he had more questions to ask. He asked questions that were unhelpful to the Applicant's case requiring the production of further documents that the witness said that she could produce if required. In doing so he clearly thought that he was going to gain some form of advantage, but in fact all the documents he asked for were produced, helping the Respondents' case. He asked open questions on general points, rather than keeping himself to specific areas within the Scott Schedule and commenced to make submissions and short speeches, when he should have been asking questions. On the one occasion that Mr Hardman conceded a point, Mr D. Fernie commenced to gloat and launch into a speech stating how this supported his case that there had been poor management. Judge Tonge had to be firm with the Applicant, who became even more difficult to control.
57. After the shortened lunch break Mr Hardman came into the Tribunal room in what appeared to the Tribunal to be an unusually ruffled state. Mr Hardman informed the Tribunal that Mr D. Fernie had attempted to intimidate him on their way back into the hearing room. As a result Mr Hardman sought to make a fresh application that Mr D. Fernie be prevented from further representing Mr J. Fernie.
58. Mr Hardman stated that Mr D. Fernie had said in a voice that was meant to be heard by Mr Hardman the words "Bar Standards". This being a reference to the disciplinary body governing the conduct of barristers. The words "the last one" were also heard. Mr Hardman thought that this was an attempt to intimidate him with a threat that he was to be reported to the Bar Standards Board. The Tribunal heard from Mr D. Fernie who explained that this was a reference to David Rose a prior barrister who had been complained about, not Mr Hardman, who had overheard part of a conversation between father and son.
59. The Tribunal accepted this explanation and finding in favour of the Applicant, did not prevent Mr D. Fernie from further representing his son. The Tribunal added that it is not appropriate to have conversations of this nature in these circumstances and that the Tribunal did not want to hear any more mention of the Bar Standards Board.
60. The case continued, moving through the Scott Schedule. The general behaviour of Mr D. Fernie did not improve. When Ms Surphlis stated that

an invoice had been recharged Mr D. Fernie asked to see the bank statements. This was clearly an attempt to challenge the witness's integrity, she having signed a certificate of truth. The Tribunal was content to accept Ms Surphlis's evidence, Mr D. Fernie was not. Bank statements were not produced.

61. Mr D. Fernie asked a question that permitted Ms Surphlis to explain how hard she worked on behalf of her the management company and how cheaply Banks Long were providing their services to the site (thereby reducing service charge costs), adding that her company had resigned from their duties effective 31 August 2021. Mr D. Fernie challenged the competency of Banks Long as management agents on the basis that failure to make a proper profit out of this contract was evidence that Banks Long were poor managers. This resulted in Ms Surphlis stating that Banks Long had resigned as management agents for this site because of the threatening and uncooperative conduct of Mr D. Fernie against their staff, in particular against Wendy Lester. It was questions from Mr D. Fernie that brought this information before the Tribunal.
62. Judge Tonge, now being very concerned about the way Mr D. Fernie was conducting the case, decided to address Mr J. Fernie and explained that his father was doing a very poor job of representing him and asked Mr J. Fernie if he could continue to attend the Tribunal for the remainder of the week. Mr J. Fernie said that he could not. The Tribunal had been further considering the question of continued representation, but decided to permit Mr D. Fernie to continue in his role, due to the fact that the Applicant did not intend to attend for the rest of the hearing.
63. As Mr Hardman stood to leave the Tribunal room at the end of the second day, he said to Judge Tonge and Mr Mountain, words to the effect, "Banks Long and Wilkin Chapman had been complained about and now me". Judge Tonge responded in an impromptu, light hearted way, the actual words Judge Tonge cannot remember, but has been recorded by Mr D. Fernie as, "Who has not been complained about?"
64. Nothing in the above should in any way be thought to reflect upon Mr Hardman who had done nothing to bring about any complaint against him. Further, nothing in the above was meant to upset the Applicant or his representative.
65. At the start of day 3, Mr Fernie served an application on the Tribunal that Judge Tonge should recuse himself for exhibiting bias against the Applicant. The comment that Judge Tonge had made was said to have been hurtful to the Applicant J. Fernie and his representative Mr D. Fernie. Further, the application stated that the comment revealed that Judge Tonge considered Mr D. Fernie to be a serial complainer, this being a biased view.

66. The recusal application went onto refer to some of the complaints that the Applicant has made. This recusal application also called into question the behaviour of Mr Hardman. The Tribunal heard from Mr D. Fernie (Mr J. Fernie no longer being present) and from Mr Hardman.
67. Judge Tonge decided that he would not recuse himself. The test is an objective one, would the reasonable person, knowing the facts, consider that a statement made reveals bias against the person alleging bias?
68. Judge Tonge recited all the many decisions that he (sitting or considering written applications alone) and more recently sitting with Mr Mountain, has made in favour of the Applicant (referred to in this judgement above, but summarised as;
- a) two applications to strike out the case,
  - b) several applications to adjourn the hearing date,
  - c) two applications to prevent Mr D. Fernie from representing the Applicant,
  - d) agreeing that the hearing to be conducted by following the Scott Schedule in numerical order rather than as described in the skeleton argument of Mr Hardman,
  - e) continued monitoring of whether it was necessary to order disclosure of service charge Bank Statements,
  - f) agreeing to arrange for a site inspection despite plans, photographs and a video fly over of the site
  - g) determination that the alleged intimidation against Mr Hardman may not have been a deliberate attempt to intimidate).

The reasonable man would not think that Judge Tonge is in any way prejudiced against the Applicant or his father.

69. However, Judge Tonge had not in any way intended to hurt the feelings of either the Applicant or his father and Judge Tonge apologised if their feelings were hurt by what Judge Tonge had said.
70. Mr D. Fernie also levelled a criticism at Judge Tonge for telling the Applicant that his father was doing a poor job of representing his interests. Judge Tonge replied that he remains firmly of the belief that his comments in that regard are correct and were made in the hope that Mr J. Fernie might agree to continue to attend the Tribunal so that he could represent himself.
71. The hearing then continued and for the remainder of the hearing Mr D. Fernie's conduct reverted to that as it had been on day one, well within acceptable Tribunal behaviour.

72. At the start of the fifth day of the hearing the Respondents' served an additional statement from Ms Surphlis of 17 pages in length, dealing with the questions that had been asked of her by Mr D. Fernie during cross examination and producing 72 additional exhibits in that regard.
73. The Tribunal had almost completed the items in the Scott Schedule when the hearing came to an end. The Parties were told that the Tribunal would sit again in private session on Tuesday 20 July 2021 and Wednesday 21 July 2021. The Parties were given leave to serve written closing speeches and further, that the Applicant can provide any written evidence thought to be necessary to challenge the second statement of Ms Surphlis. All to be delivered to the Tribunal by 4pm, Tuesday 20 July 2021. The Tribunal assured the Parties that if any such material needed to be taken into account in relation to issues already decided during Tuesday, the Tribunal would do so.
74. The oral hearing terminated at 1pm on Friday 16 July 2021. Those that asked were given permission to dress less formally for the inspection due to commence at 2.30pm that afternoon, it being a very hot day.

### **The Inspection**

75. The inspection commenced at 2.30 pm on 26 July 2021. Present on behalf of the Respondents were Ms Surphlis and Mr Hardman, accompanied by a note taker from Wilkin Chapman solicitors. On behalf of the Applicant, Mr D. Fernie. It was a very hot day and clothing was relaxed to casual and comfortable to anyone who asked. It took one and a half hours to walk the route planned by Ms Surphlis, designed to show the Tribunal some of the areas in dispute. At the commencement of the inspection all persons present were handed another site plan that indicated the locations to be visited during the inspection.
76. The inspection supplemented site plans, photographs and a video fly over taken by a drone. The Tribunal had originally determined that an inspection was not necessary, but changed its view upon the insistence of Mr D. Fernie. The Respondents were required to arrange the inspection as the hearing went along.
77. In fact, the inspection brought it home to the Tribunal how very special this site is, being 'one of a kind' and appeared to be clean (except for goose excrement which was said to be a problem compounded by residents feeding the geese) and well maintained. Having seen the essential parts of the site, from the point of view of the case, the Tribunal did not attempt to inspect the remainder of the site that would have taken considerably longer.

78. The inspection moved from the large visitors car park to a zebra crossing that features in the case. The Tribunal saw that the crossing, road markings and belisha beacons had all been removed. The dropped kerb and bubbled pedestrian approach paving slabs remained in situ. A photograph was taken.
79. The main roundabout off the A57 has not been adopted by the local authority. It has 4 bollards, one on each of the four roads approaching the main roundabout.
80. There are two large metal signs (approximately 10' high), one on each side of the unadopted road linking onto the A57. These advertise the fact that the motorist is entering or leaving 'Burton Waters, Beal Homes, a total lifestyle concept'. Metal lettering has clearly been replaced on these signs. The Tribunal took a photograph.
81. Mr Fernie brought to our attention a sign warning that parking is for permit holders only at the side of a parked car. The Tribunal took a photograph.
82. The Tribunal observed an area of mown grass, but without buildings off to one side of the road. This is an area awaiting development, but the grass is being maintained. The Tribunal took a photograph.
83. There is a length of road where wooden posts have been erected along the edge of the road where there is an area of grass at the edge of the road and double yellow line markings. This was a considerable length of posts and it appeared to the Tribunal that the most likely reason for doing this was to stop drivers parking with wheels onto the grass area. The Tribunal took a photograph.
84. The Tribunal then walked towards Pontoon Gate 3. The pontoons are slip ways into the water and there are gates across the front of a roofed structure surrounded by fencing that leads to the slip way. Two photographs were taken, one to show two lamp posts near the pontoon and the other a close up of the gates.
85. The Tribunal then walked to the Marina Gates, damaged in the past. They are electric gates that are kept open during working hours and were observed to be open. The Tribunal took a photograph. The Tribunal was informed that this belongs to Burton Waters Moorings Company, but that the First Respondent has a sub lease granting permission to move along the road to the Management Building, where part of the sub lease lets the first storey and access stairs to the First Respondent to house the security office. The lease also provides a separate landscaping store for use of the First Respondent's landscaping, gardening staff. The Tribunal noted that a big

pressure washer (photograph already seen in additional evidence) was in use.

86. The Tribunal then entered the security office, accompanied by a security officer, but by prior agreement because of confidentiality issues, without the rest of the persons at the inspection. Tribunal members wore face coverings during this part of the inspection. The entrance gives onto a curved flight of steps that curves around the inside of an exterior wall. There are toilets and a small office, the hall way then leads into a large office that houses 9 CCTV monitors, 6 are large and split screen, 3 are smaller and were single screen upon our visit. These were being monitored by a second security officer. There is a balcony outside that had chicken wire fastened to the floor as an anti slip precaution. There was some cupboard space in both offices. The walls were all a uniform pale colour.
87. The Tribunal rejoined the rest of the inspection party and looked across the part of the marina leading to the lock gates that permit boats to enter and leave onto the Fossdyke. The Tribunal saw that near to the lock gates channel there is a fence and that rising from that fence there is a tall pole with a light on it. This is the light that comes on automatically at night if a boat moves past it.
88. The Tribunal noted that there is a flag pole with ropes attached from which three flags are flying.
89. The Tribunal walked to the grounds personnel store and observed two smaller pressure washers. The medium sized pressure washer (when considering all 3 together) appeared to be well used. The store has a mezzanine floor with a ladder giving access to it. There was a ramp leaning next to a bench for the movement of heavy items including such things as large pressure washers. High visibility coats were hanging off pegs.
90. The Tribunal returned to the fob activated gate leading to the public footpath at the side of the Fossdyke and went through that gate to walk along that public footpath. This may once have been a towpath. We walked along the exterior of the site with a fence marking the outside of the site to our left and the Fossdyke on our right. The Tribunal took a photograph, from the public footpath to the fence.
91. The Tribunal walked onto the bridge over the channel that has been cut into the Fossdyke, linking the Marina to the Fossdyke. The Tribunal noted that this bridge, although constructed as part of the development of the site is part of the public footpath. The Tribunal took a photograph.
92. The Tribunal walked along the public footpath until it reached another fob activated gate through the site fence and back into the site again, on to Park Lane, the road going around the outside of the site.

93. The Tribunal saw a pole with a security camera at the top of it. This was near to a track that has a stone surface that goes off the road into a tree lined area. The security camera was a short distance away from a second security camera up that track and partly masked by trees. The new camera having been installed when the older one started to be masked. The Tribunal took a photograph.
94. The Tribunal walked along the track and saw an array of 6 substantial compost containers that appeared to be full of compostable garden material. In the past these had been contaminated by having non-compostable materials put into them, requiring that they be emptied. The Tribunal took a photograph.
95. The Tribunal returned to Park Lane and to the edge of part of the marina to a deep water sign on the marina bank to warn pedestrians. This has a buoyancy aid attached to it. The Tribunal took a photograph.
96. Mr Fernie contended that a short distance away we would be able to see such a sign actually standing out of the marina water. We all accompanied Mr Fernie to his chosen location, Ellisons Quay. The Tribunal notes that there are three such signs spread out around the bank of the marina, but there are no such signs in the water.
97. The Tribunal walked past a block paved road which had an area of loose block paving. This being a maintenance problem, it was noted by the Tribunal, being aware that block paving work features in the case.
98. The Tribunal walked past a garden area that had been planted by the contractor Roark (this being representative of 3 such areas). The Tribunal took a photograph.
99. The Tribunal walked to a rising barrier gate that has often been damaged in the evidence before the Tribunal. On the approach to the gate there is an intercom system for communicating with security and fob activation. There is also a CCTV camera mounted quite low on a short pole, close to the gates and an ANPR camera further away mounted high on a pole. The Tribunal took two photographs.
100. The Tribunal walked past toilets (repainted in the case) and along a parade of shops with rusty bench seats outside. These are in the process of being replaced, five replacements for another area already purchased.
101. The Tribunal walked towards a shop, with two lampposts near to the shop, one of these features in the case with the wind blowing the top off the lamp. The Tribunal took a photograph.

102. The Tribunal then walked past a water feature near to the property. The Tribunal took a photograph.
103. The Tribunal then walked back towards the starting point at the main car park that is open to the public. The inspection was brought to an end. Photographs have been retained in the Judges papers.

## THE LAW

### Landlord and Tenant Act 1985

Section 18, meaning of service charge and relevant costs.

Briefly this defines a service charge and associated costs as the variable cost of providing the service.

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.

Section 19, Limitation of service charges: reasonableness.

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
- (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

## **Relevant provisions of the lease**

104. The under lease for the property, title number LL330823, was made on 24 July 2015, for a term of 999 years, commencing 1 January 1999. The parties to the lease are Beal Developments Limited (the Landlord), Joshua John Fernie (the Tenant) and Burton Waters Management Limited, the management company.
105. Clause 1.6 defines the development as being land within four title numbers LL330823, LL53620, LL104074 and LL208305, being the whole of the 140 acre site.
106. Clause 1.10 defines the service charge to be paid by the Applicant as a proportion of the costs, charges and expenses referred to in the Fourth Schedule, as the Management Company acting reasonably shall consider to be payable by the Applicant pursuant to the Fifth Schedule.
107. Clause 1.11 defines the common parts as all amenities upon the development used in common by the occupants of each part of the development. Hence, when snagging is over all common parts come within the service charges regime for the Applicant's lease. The Tribunal uses this example to demonstrate how the lease works with regard to inclusion within the service charge scheme as it effects the Applicant. Erecting a lamp post in a common area is a development cost, there may be snagging issues which would still be a development cost, but once switched on and working properly, repair would be a service charge cost.
108. Clause 3 requires the applicant to observe the covenants in schedule 3.
109. The First Schedule grants rights of access over roads and footpaths built and to be built as common parts on the development and use of those common parts.
110. The Third Schedule requires that the applicant pay the service charge.
111. The Fifth Schedule defines service charges as including all costs incurred by the management company in performing their management functions as defined in schedule 4 and all other sums incurred in maintenance, management and running the site including any legal costs incurred for the benefit of occupiers of any part of the development. The management company may employ a management agent and contractors. The First Respondent may charge 7.5% of the service charge costs for administration costs. Service charges can be estimated and charged in advance, with a balancing exercise (Respondent's bundle, volume A, page 17).

### **Other leases relevant to this site**

112. The Respondents' bundle, volume E, section 2 and 3, contains copies of the head lease for this part of the site and head leases for other parts of the development. The First Respondent is a party to these leases.
113. The Tribunal has not seen the original sale of land or lease that must have conveyed the 140 acres between the A57 and the Fossdyke to Eastman Securities Limited. The Tribunal cannot therefore see the exact details as to how the development came to gain permission to cut an entrance canal into the Fossdyke, through a public footpath and build a footbridge to maintain the route of the public footpath. Exhibited to Ms Surphlis's additional witness statement there part of an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 between West Lindsay district Council and Eastman Securities Limited, clause (k) requires that there be a bridge only for the use of the public footpath over the channel connecting the marina basin with the Fossdyke canal.

### **The Deliberations**

114. The Tribunal members met in private session on 20 July 2021 and 21 July 2021 to determine the issues in this case. In determination of these issues the Tribunal has taken account of all the written and oral evidence in the case, including the additional evidence contained within the statement of Garry Carl Taylor, the second statement of Ms Surphlis, the submissions of the Applicant (dated, 20 July 2021) and the closing submissions of the Respondents (dated, 20 July 2021). The Tribunal notes that there is an application to extend the application under section 20C of the Landlord and Tenant Act 1985 to include other long leaseholders. The Tribunal notes that as a result of extended sitting times on 6 out of 7 days, the Tribunal has devoted the equivalent of 9 days hearing time to this case, with an additional site inspection.
115. The Tribunal is asked by the Respondents in their closing submissions to consider making thirteen observations in the case as findings of fact. The Tribunal prefers to deal with the issues that must be dealt with as detailed in the Scott Schedule. However, it is obvious to the Tribunal that there have been allegations of mismanagement, back dating of invoices and various levels of improper conduct on the part of the Respondents, their officers and agents. The Tribunal makes it clear that it has seen no evidence that supports any such accusations. The Tribunal has come to the conclusion that this is a well run development that is run for the benefit of all persons concerned with the site.
116. The Tribunal has been asked to consider assertions that the site is being run in contravention of the Royal Institution of Chartered Surveyors, Code

of Practice, Service Charges Residential Management Code, third edition. The assertion being that on numerous occasions Banks Long should have acquired alternative tenders or quotes, when they have not. The Tribunal has not been referred to any particular part of the Code, but considers two sections to be relevant.

117. Firstly, on page 5 of the Code, bottom of the first column. "Best practice requires services to be produced on an appropriate value for money basis and that competitive quotations are obtained or costs are benchmarked." The Tribunal accepts the evidence of Ms Surphlis and considers Banks Long to have complied with this part of the guidance in that they have relied upon their experience and knowledge in running approximately 160 sites to be able to instruct cost effective contractors when the requirements of the site as a whole are taken into account. For example, the CCTV system is particularly complicated, having grown with this gated, secure site. Knowledge of the site and urgency of some repairs must be taken into account. A management agent that does not have this depth of knowledge into the requirements of the site and available contractors might have to charge far more in management fees to cover the extra work that lack of knowledge would require. There has been no breach of the Code.
118. Secondly, page 40 of the Code, Part 10.2, "selection, approval and tendering". This section is too long to recite here, but the Tribunal is satisfied that where Banks Long thought it necessary to obtain tenders or quotes, that they did so. There are no larger works as mentioned in the code. In considering this section, the Tribunal also concludes that there has been no breach of the Code.
119. Banks Long are appointed as management agents for the First Respondent. As agents for them the actions of Banks Long bind the First Respondent. Hence, at any point where a service charge document is sent or received by Banks Long, it is sent or received as agents for the First Respondent.
120. The First Respondent does not charge the 7.5% that it could charge under the terms of the lease. The Tribunal was told that this is because Mr Costall had indicated that he did not want to charge these sums out of a desire to keep service charge costs down. The Tribunal was also told that this had saved an extra charge of about £30,000 per year to the Applicant's service charge account. This is significant saving in service charge costs that are demanded from the Applicant. There is a down side to this service charge saving. Since the First Respondent does not make a profit it does not have a credit rating. Banks Long have had to run part of the acquisition of goods and services for the site by means of a Banks Long credit card, adding later a Soldo card. Also, the choice of contractor for the hire of motor vehicles was restricted to the only firm that would hire a vehicle to a company without a credit rating, Arian.

121. The Applicant has failed to adduce any quotes that the Tribunal could compare with the service charge cost in issue. Further, the Tribunal accepts that there are often many criteria to take into account when deciding which contractor to use or which location should be used for the purchase of goods, in addition to the actual price of the goods or service.
122. The Applicant has sought the Tribunal's permission to inspect service charge bank statements where items have had to be recharged. This has been resisted by the Respondents who seek to protect confidential information. The Tribunal has kept this under review, but has not thought it necessary to inspect this account for three reasons. First, we accept the assurance of Ms Surphlis, on each occasion, that there has been a recharging. Secondly, we accept the evidence of Ms Surphlis that the service charge accounts are subject to a bank reconciliation every three months and that this would show up any discrepancy that might exist. Further, those reconciliations are sent with the accounting information to the accountant who will inspect them as an additional check.
123. The Tribunal, as a general oversight, considers the level of service charges demanded for the four years in question to be very reasonable, more in keeping with a site with considerably less to offer in common services than this site has to offer.
124. The Tribunal now considers the submissions made by the Applicant "the submissions", dated 20 July 2021. The Tribunal notes that at the end of the hearing Mr Mountain thanked Ms Surphlis for the way that she had conducted herself throughout five days of being cross examined by Mr D. Fernie and, when invited to join in these sentiments, Mr D. Fernie agreed to do so. The Tribunal is therefore surprised that in paragraph 1 of the submissions Ms Surphlis is criticised contending that she "lay accusations against the Applicant and his representative Mr Fernie often without any verification whatsoever". When asked questions by Mr D. Fernie (meant to elicit that Banks Long had resigned as management agents because they were not efficient managers) Ms Surphlis told the Tribunal that the real reason for the resignation was that Mr D. Fernie had acted in a threatening manner and had been difficult to deal with. This happened on one occasion and would not have happened at all if Mr D. Fernie had not asked a challenging question that brought about the answer.
125. In paragraph 2 of the submissions, the Applicant refers to "clearly biased comments made against the Applicant and his father by Judge Tonge. One of which Judge Tonge deeply apologised for...". At the start of day 3 of the hearing there was an application for recusal on the basis that Judge Tonge had made one potentially biased comment at the end of day 2 of the hearing. This was dealt with by submissions from both parties and a refusal to recuse on the basis that there was no bias. Judge Tonge did not apologise

for making a biased comment, he apologised because he was told that the comment had upset the Applicant and Mr D. Fernie. Judge Tonge had not intended to cause any such upset. The Tribunal further notes that the impromptu comment made by Judge Tonge was made in a hearing room in which all 6 persons present were already aware of the history to the case and most of the complaints that had been made by the Applicant and his father.

126. In paragraph 3 of the submissions the Applicant complains that he has been unfairly denied access to Bank Statements. This is not correct, the Tribunal having been informed that the Bank statements contain confidential information had to balance the competing interests of the Parties. At the Direction of the Tribunal those Bank Statements were brought to the Tribunal room. The issue was again considered by the full Tribunal and a Direction made that the situation would be monitored by the Tribunal and that if circumstances arose that the Tribunal considered were such as to require production of part of those Bank Statements, then that would happen. Such circumstances did not arise.
127. In Paragraph 4 of the submissions, the Applicant complains that the Tribunal, having allowed the very late statement of Garry Carl Taylor to be admitted into evidence, should not have allowed the Respondents to point out that this statement is from an ex employee who is taking action against the First Respondent for unfair dismissal and may be a disgruntled ex employee. The Tribunal is of the opinion that it was perfectly proper to inform the Tribunal of these circumstances.
128. In paragraph 5 of the submissions, the Applicant suggests that Mr Hardman has misled the Tribunal. This is a serious allegation against a member of the Bar which has no place in a case in which the only issues that the Tribunal have jurisdiction to decide are whether a service charge is chargeable and is it reasonable.
129. The Tribunal notes the rest of the submissions and exhibits that have been considered.
130. The Tribunal now turns to consider the matters raised in the Scott Schedule, but in doing so adopts the method suggested by Mr Hardman. The Tribunal will deal with 15 separate areas of issues, considering each item in that area of issues together. This being much more efficient than starting at Scott Schedule 1 and going through each item point by point until reaching the end of the schedule. The Tribunal makes amendments to the Scott Schedule references and invoice numbers as are found to be appropriate.
131. The first head of issues is Security Industry Authority Licences. These licences last for 3 years, at a cost of £240 plus VAT, and are intended to

ensure that persons involved in security are fit and proper persons. One of the big features of the site is that it is a gated site with 24 hour security provided by the monitoring of a bank of CCTV monitors in the security office and mobile patrols. Security is necessary for the whole site and is clearly a service charge cost (the lease, fourth schedule, paragraph 6). Was it reasonable for the management company to fund S.I.A. licences for their security staff? Was it reasonable to pay for a licence for Sue Waudby?

132. The Applicant contends that it is normal within the security industry for employees to pay for their own licences, but has not adduced any evidence to this effect. The Applicant has adduced evidence to the effect that if employees do so they will receive tax relief on such costs. The Respondents' case is that it is reasonable to fund these licences for staff who must have them and are not well paid. Mr D. Fernie asked questions about the fact although there is mention in the Respondents' case of an S. I. A. inspection, the S. I. A. report following the inspection has not been included in the evidence. As a result the S.I.A. report has been served in additional evidence.
133. The S. I. A. report, dated 19 July 2011 (Respondents' additional evidence, page 1 and 2) is in fact an improvement notice, addressed to Mr Costall of Beal Homes, Burton Waters. It points out that the Directors of Burton Waters Management Ltd, Burton Waters Landings Ltd, Eastman Securities Ltd and all security staff must all have S.I.A. licences and that failure to comply might lead to prosecution.
134. The Tribunal accepts that the First Respondent will try to recover the appropriate part of the cost of such a licence if a member of security staff leaves employment there being a term in contracts of employment that provides for this (Respondents' volume D, 307).
135. Mr D. Fernie asked about alternative methods of providing security from outside providers, Ms Surphlis said that quotes had been obtained, but because of VAT considerations this had not been cost effective.
136. The Tribunal has considered invoices and email (Respondents' volume E 225, part of which relates to Dawid Mruck, F 600 and G1108) and determines that it is perfectly reasonable for security staff to have their S. I. A. licences purchased for them in this manner.
137. In relation to Sue Waudby (Respondents' volume E, 225) the Tribunal accepts that there was an expectation that she would become a Director of Burton Waters Management Company Limited and as such would need to have an S. I. A. licence (although it transpires that the appointment was not made). In any event the Tribunal accepts that Ms Waudby was a key holder, line manager and supervisor of security staff and therefore needed to have a licence. Presumably Ms Waudby was somewhat better paid than the

security officers, so slightly different considerations apply, but again the Tribunal determines that it was a service charge cost and that it was reasonable to do this.

138. This determines Scott Schedule points 1, 2, 70 and 227. All these amounts are chargeable under the terms of the lease and are charged at a reasonable level, being payments for licences.
139. The Tribunal now deals with the second head of issues, Burton Waters Moorings Limited. The Applicant contends that certain services are being provided by security staff to Burton Waters Moorings Limited free of charge. These services are dealing with the sale of utility cards that result in boat users being able to use electricity and water supplied by Burton Waters Moorings Limited. The Applicant estimates that over the four years that the Tribunal is concerned with a total of £55,750 should be recovered from Burton Waters Moorings Limited, thus reducing the service charges cost to the Applicant by a proportion of that amount. In simple terms the Tribunal should reduce the service charges cost to the Applicant by his share of that amount. The Tribunal takes into account the statement of Carl Garry Taylor who confirms that some time is expended by security staff in this regard. The Tribunal notes that there no time sheets served that might assist the Tribunal to ascertain how long is actually spent by security staff on this type of work. In any event a member of security has to remain in the security office to monitor security cameras.
140. The Respondents accept that the security staff will be required to act in this way when the Moorings office is shut, outside normal office hours. The Respondents dispute the amount of time spent on this service, but in any event it is their case that the apportionment calculations made by Mr Banks results in a payment from Burton Waters Moorings Limited into the service charge account of the management company. This is currently £17,077.52 plus VAT. The Tribunal is referred to one of the apportionment documents within the Respondents' bundle that establishes the percentage of contribution to be made by Burton Waters Moorings Limited in 2017 as 3.8% and in 2018 as 3.75% (Respondents' volume E, 2). The same document reveals other percentage charge contributions from other contributors.
141. The Tribunal is satisfied that these claims contained in the Scott Schedule at item 4 and 6 (6 relating to companies benefiting from security generally) have been brought without the Applicant realising that contributions are being made by both Burton Waters Moorings Limited and Beal Developments Limited (as calculated to be appropriate by Mr Banks) towards the service charge account that effects the Applicant. As such the Tribunal determines that the Applicant's suggestion that services are being provided to these companies free of charge is not correct. The Tribunal

determines that no adjustment should be made to the Applicant's service charge account.

142. This head of issues is extended to consider specific invoices:
- Scott Schedule 8, invoice (Respondents' volume E, 229)
  - Scott Schedule 9, invoice (Respondents' volume E, 230 and 231)
  - Scott Schedule 10, 11 and 12, invoice (Respondents' volume E, 232 and 233, E234 and E235, E 233)
  - Scott Schedule 54, invoice (Respondents' volume F, 519)
  - Scott Schedule 144, invoice (Respondents' volume G, 836)
  - Scott Schedule 56, invoice (Respondents' volume F,527)
  - Scott Schedule 210, invoice (Respondents' volume G, 1104)
  - Scott Schedule 260, invoice (Respondents' volume G, 1184)
143. In relation to all of these invoices the Applicant alleges that his service charge account has been charged for works that should have been charged to Burton Waters Moorings Limited or Beal Developments Limited.
144. The Respondents' agree that some of these charges are not charges that are relevant to the calculation of service charges in so far as the Applicant is concerned, where this is the case they have not been charged to the Applicant's service charge account. They have been recharged to the appropriate company.
145. The Tribunal has considered each invoice and can see that Scott Schedule 8, invoice E229 is a recharge to Burton Waters Moorings Limited, although it should have been a recharge to Beal Developments Limited, it being the installation of a security barrier and therefore a development cost. Scott Schedule 9, invoice 231 is a recharge of invoice 230. Scott Schedule 10, invoice E233 is a recharge of E232. Scott Schedule 11, invoices E235 and E234 are the same invoice slightly reworded and relate to an access gate that is left open during normal working hours , but is fob controlled after that. It is a common area. Scott Schedule 12, E233 is a recharge of E232 and has already been dealt with in Scott Schedule 10. Scott Schedule 54, F519 is an invoice paid by the management company and F520 is that same amount being recharged to Burton Waters Moorings Limited, there being no charge to the Applicant's service charge account. Scott Schedule 144, G836 is an invoice paid by the management company and G837 is that same amount being recharged to Burton Waters Moorings Limited, there being no charge to the Applicant's service charge account.
146. Also included in this head of issues are three Scott Schedule points (56 (a) to (p), 210 (a)-(p) and 260 (a)-(m) in which the Applicant challenges work done by the management companies landscaping staff, being items of work outside the usual scope of the service that they provide and then

charged on an ad hoc basis and paid for by Burton Waters Moorings or Burton Waters Marina. There is no issue as to the fact that these two companies have paid for the work done as invoiced, but the Applicant argues that the work has not been invoiced at a proper level. The Applicant does not adduce any evidence as to what that proper level might be. The Respondents' counter submission is that the hourly fee charged has been properly worked out by averaging the hourly pay of their four staff, any one of whom might be required to undertake the work, when they have time to do so. It is a competitive price, if it were not the customer companies would go elsewhere, but this brings money into the service charge account, reducing the charge demanded from the Applicant. The Tribunal determines that it is reasonable for staff to be used in this way, reducing the service charge cost to the Applicant.

147. The third head of issues, security staff, CCTV, gates, etc. This head covers 35 Scott Schedule points:

- a) Scott Schedule 3, 228 and 230, relating to key fobs, invoice G1109.
- b) Scott Schedule 19, CCTV repairs, various invoices and documents, E347 and 15 others.
- c) Scott Schedule 22, fitness policy, invoice E384.
- d) Scott Schedule 24, mobile security by Mowhawk, various invoices including E399.
- e) Scott Schedule 87, mobile security by Mowhawk, invoice F647.
- f) Scott Schedule 72, Fearne Plant, invoice F603.
- g) Scott Schedule 75, Lincoln Security maintenance fee, invoice F607.
- h) Scott Schedule 77, Relocation of camera, invoice F611.
- i) Scott Schedule 78, supply new camera, invoice F612.
- j) Scott Schedule 81, two joysticks for CCTV, invoice F616 and F617.
- k) Scott Schedule 147, Lincoln Security maintenance fee, invoice G864.
- l) Scott Schedule 150, repair to Quay's main gate, invoice G867.
- m) Scott Schedule 152, install new number plate recognition system, G869.
- n) Scott Schedule 153, various gate repairs, invoice G870 and G875.
- o) Scott Schedule 156, Lincoln Security maintenance fee, invoice G877.
- p) Scott Schedule 157, lay ducting for CCTV, invoice G879.
- q) Scott Schedule 158, relocation/addition of new camera due to tree obstruction, G880.
- r) Scott Schedule 159, upgrade CCTV, invoice G883, G884, G885, G886.
- s) Scott Schedule 165, Mowhawk security, invoice G901.
- t) Scott Schedule 192, security lighting, invoice G972.
- u) Scott Schedule 193, security lighting, invoice G973.
- v) Scott Schedule 194, security lighting, invoice G974.
- w) Scott Schedule 195, security lighting, invoice G975.
- x) Scott Schedule 231, replace microphone and receiver, invoice G1112.
- y) Scott Schedule 233, car damages gate, invoice G1114.
- z) Scott Schedule 234, car damages gate, invoice G1115.
- aa) Scott Schedule 235, Lincoln Security maintenance fee, invoice G1117.

- bb) Scott Schedule 239, security contractors, invoice G1140.
  - cc) Scott Schedule 240, accommodation for security guard, invoice G1148.
  - dd) Scott Schedule 18 and 74, gate repair, invoice E243.
  - ee) Scott Schedule 155, renewal of access control system, G876.
  - ff) Scott Schedule 273, lighting plan for security, G1210.
148. Item a) above deals with a challenge to the way that key fobs are issued on the site. The fobs are required for access through security gates. They cost the site £3.50 plus VAT. They are issued either at no cost, for the first issue or at a replacement cost of £24. Fees are refunded when replacements are returned. The Tribunal accepts the evidence on behalf of the Respondents that an inflated charge is used to encourage residents not to ask for replacement fobs. If any profit is made it is paid into the service charge account, reducing the Applicant's service charges. The Tribunal determines that this is a reasonable method of dealing with fobs.
149. Scott Schedule 3 contains an allegation of improper conduct on the part of Mr Costall, the details of which the Tribunal will not repeat. The Tribunal notes that the Applicant's witness Mr Garry Taylor gives a detailed account of the issue of fobs and the only persons involved, other than security staff, are Wendy Lester, arranging payment from residents and Ms Surphlis collecting the money paid by persons mooring boats. The allegation made against Mr Costall is completely without foundation or supporting evidence and the Tribunal determines that it should not have been made. The Applicant also requests that an audit of the fobs take place. The Tribunal determines that this is a matter for management to decide upon and is not a challenge to a service charge cost.
150. Item a), above also contains two other Scott Schedule points. Scott Schedule 228 asks for an explanation relating to different types of fob and the explanation is provided. Scott Schedule 230 asks for a further explanation and it is given. These do not appear to challenge service charge costs. In any event the Tribunal makes it clear that it determines that the method of dealing with fobs on the site is reasonable.
151. Item b), above. Security costs are chargeable pursuant to the lease, fourth schedule paragraph 7. The Applicant suggests that the invoices for repairs and updating of the CCTV system are excessive. The Respondents go through each invoice pointing out that the CCTV system is a complicated system, having grown with the site, it has required investment in new and improved installations. It must be maintained and repaired. The Tribunal has gone through all the documents referred to and determines that the £11,500 spent is a reasonable service charge cost.
152. Item c), above challenges the cost of an invoice from Chattertons McKinnells Solicitors for the drafting of a policy regulating the introduction of fitness tests for security guards, dated 9 January 2015. The Applicant

points out that it is his belief that the security officers have been told not to chase anyone and asks why this was necessary. The Tribunal notes that the witness Garry Carl Taylor was a security officer for 19 months and he does not confirm that he had been told not to chase anyone. That aside, the witness describes duties that require a certain level of fitness. The Tribunal determines that it is reasonable for a fitness test to be required and that since this invoice relates to drafting a policy with that in mind it is reasonable for the First respondent to obtain legal advice and a professionally drafted policy. The Tribunal determines that these costs can be charged as a service charge cost and that they are reasonable.

153. Item d) and e) and s) above. The Applicant challenges the invoices from Mohawk security that relate to the provision of additional mobile security when cover is needed because of the absence of an employee. The disputed amounts are £132, £3,396.90 and £3,469.40 (the last figure including the 10 invoices as referred to on the Scott Schedule and including G901). The Applicant asks if this firm is value for money? The Respondents contend that the firm is value for money, being far cheaper than employing additional staff to cover absences. The Tribunal determines that these are reasonable costs, being a reasonable method of covering staff absences.
154. Item f), above. Invoice cost £11,960. The invoice details the work done. The Applicant suggests that he could have had the work done for £3,000, but does not provide any alternative quote for the Tribunal to consider. Ms Surphlis states that she did try to obtain alternative quotes, but the other two firms approached did not tender for the work. This firm came with a recommendation. The Tribunal determines that this is a service charge cost and that it is within the scale of reasonable charges for this type of work.
155. Item g), k), o) and aa). The first two relate to the annual fee for maintenance inspections to intercom, access control, traffic barriers and automatic gates. The second two relate to the CCTV annual maintenance contract. The Applicant's challenge disputes the whole amount of £1,440 (first 2 invoices) and £996 (second two invoices). The Respondents had used Global Vision, but they did not provide a good enough service so the Respondents then chose to use Lincoln Security as they provide a good service and have built up an intimate knowledge of the complicated security systems on the site. The Respondents also contend that Lincoln Security are cost effective and that when they were chosen other alternative providers were considered. The Tribunal determines that these are service charge costs and are charged within the scale of reasonable charges.
156. Item h), above. The invoice is for £2,892 from Lincoln Security having relocated a security camera. The invoice is detailed, setting out what had to be done. The Tribunal determines that these service charge costs that are charged within the scale of reasonable charges.

157. Item i), above. The 2 page invoice from Lincoln Security details the work that had be done. All security cameras are located in common areas. The monies had been accrued in 2015, when there would have been a service charge cost of £3,480, but the work was completed in 2016. The Tribunal determines that these are service charge costs and charges are charged within the scale of reasonable charges.
158. Item j), above. There are two invoices for the same joy stick for control of CCTV cameras. The first is to replace a pre-existing joy stick that had failed. The second was needed after a member of staff fainted and broke the first. Both invoices are for supply and fitting of the joy stick at £408.14. The Tribunal determines that these are service charge costs and that the charges are charged within the scale of reasonable charges.
159. Item l), above. The challenge to the whole amount of £646.92 is on the basis that there had already been a repair to this gate 5 months earlier, challenging the reasonableness of the cost. The Respondents' case is that the gate needed further repair. The Tribunal determines that these charges are service charge costs and are charged within the scale of reasonable charges.
160. Item m), above. The cost of £8,607.42 for installing a number plate recognition system to supplement the existing camera (the Tribunal notes that on many occasions the existing camera has failed to obtain a clear registration number), with a view to identifying persons who damage the gate. The cost is challenged on the basis that there were no alternative quotes obtained. The Respondents' point out that they prefer to instruct Lincoln Security for reasons already stated. The Tribunal determines that these charges are service charge costs that are charged within the scale of reasonable charges.
161. Item n), above. Two invoices from Lincoln Security for various items of work to gates within the site. These are considered to be a service charge cost because all residents benefit from the gates being accessible and being operative. The combined cost is £288. The Tribunal determines that these charges are service charge costs that are charged within the scale of reasonable charges.
162. Item p) and q), above. These two invoices relate to the same project. G879 is £5,340, charged by Fearn Plant Limited for the preparatory work of laying ducting for the new camera and concreting the camera posts. G880 (two pages) is £7,560 charged by Lincoln Security for the remainder of the work needed and is a very detailed invoice. The Respondents' state that this was necessary as the pre-existing camera could no longer fulfil its purpose due to the growth of trees now causing an obstruction to the camera. The Applicant challenges the cost as being unreasonable. The Tribunal having visited the site and observed these cameras agrees with the

Respondents that this work was necessary. The Tribunal determines that these charges are service charge costs that are charged within the scale of reasonable charges.

163. Item r), above. Four invoices for the supply of cameras to common areas around the site, by Lincoln Security for a total value of £4,410. Replacing cameras that were at the end of their useful life, with modern more advanced cameras. Alternative quotes requested by the Applicant, but at the same time the Applicant does not advance any alternative quotes. The Respondents did not obtain any alternative quotes, for the reasons already stated, above. The Tribunal accepts that this work is necessary to continue the high standard of security monitoring. The Tribunal determines that these charges are service charge costs that are charged within the scale of reasonable charges.
164. Item t), u), v) and w) are all invoices that relate to lights that are needed to make sure that CCTV can properly monitor the site during the night and to light the site generally. The Applicant suggest that some of the work may be under warranty, some may be for other companies sharing the site and points to the lack of quotes, whilst not advancing any quotes himself. These are invoices from MB Electrical Services Lincoln Limited. They are to a total value of £4,955.88. Invoice G972 includes the security light at the lock gates inspected by the Tribunal. This light is activated when a boat passes it at night. The Tribunal determines that this is an essential security feature, without which the whole site would be at risk from trespassers, entering the site by means of a boat at night, without the knowledge of the duty security team. Where items are under warranty they have not been repaired as a service charge cost, see invoice G973. The Tribunal determines that these lights have to work for the purpose of CCTV at night and that they are either the First Respondent's sole responsibility or covered by apportioned contributions to the service charge account. As such all the invoices are service charge costs. The Tribunal determines that these charges are charged within the scale of reasonable charges.
165. Item x), above. This is the replacement of a microphone and receiver on a security gate so that residents attempting to access the gate may contact the security office if they need to do so. This is clearly a service charge expense and is charged at a reasonable level.
166. Item y) and z), above. These are invoices for repairs to a security gate, damaged by vehicles being driven negligently. The Tribunal accepts the evidence given on behalf of the First Respondent, that where a driver can be traced he is required to pay for the damage. Further there is insurance covering this type of damage, but that the excess is £500. Item y) is a crash in which the CCTV did not capture the registration of the vehicle involved and the whole amount of the repair is payable as a service charge cost. Item z) is a crash in which a claim is being made through the insurance company

for part of the cost of repairs. The Invoice has been paid and is a service charge cost, but some may be recovered from the insurance company. The Tribunal determines that the repair invoices are chargeable as service charge costs and are reasonable.

167. Item bb), above. This invoice relates to mobile security patrols now being provided by First Choice Security, replacing Mowhawk Security. This invoice for £408.10 is for 8 visits during 2018, to cover security staff absence in the same way that Mowhawk used to fill those gaps. This is clearly a service charge expense and is reasonable.
168. Item cc), above. This is an invoice that pays for an overnight stay in the site for a security guard who could not get home because of a snow fall. The £60 is clearly a service charge expense and is reasonable.
169. Item dd), above. This two page invoice E242 and E243 is a quote for the cost of work to be done in the future to Marina gate, dated 13 November 2015. The work was actually done in 2016 and is the subject of Scott Schedule 74, invoice F605 and F606 when the cost of £6,067.39 was paid. Marina gate is a gate which is open during the day, but the staff of the First Respondent have access when it is shut, so that they can access the security office and grounds store. This is a service charge cost and it is reasonable.
170. Item ee), above. The Tribunal accepts the evidence of Ms Surphlis that this is the second page of a quote for repairs to be carried out in the future to the Marina pedestrian gate access control system. When this work was actually carried out it would be a service charge expense and would be charged at a reasonable level.
171. Item ff), above. An invoice for £196.68 to pay an architect to produce an up to date plan of the site to show the position of lights and security equipment. The First Respondent clearly thought that this would assist in good management of the site. The Tribunal determines that this is a service charge expense and that it is charged at a reasonable level.
172. The Tribunal now moves to consider the fourth head of issues, gardening maintenance. This head of issues contains 16 Scott Schedule points:
  - a) Scott Schedule 38, equipment, F455, 456, 462, 465, 467, 469, 471, etc
  - b) Scott Schedule 42 and 248, Ace mechanical digger, F494 and G1165
  - c) Scott Schedule 45, MB Electrical, cherry picker and lighting, F497-504
  - d) Scott Schedule 48, new tractor, F510
  - e) Scott Schedule 50, petrol mower, F513
  - f) Scott Schedule 105, MB Electrical, replace bollards, F703
  - g) Scott Schedule 108, Fearn, compost bays, F706
  - h) Scott Schedule 112, MB Electrical, defective lights, F710
  - i) Scott Schedule 117, MB Electrical, cherry picker, lighting , F716

- j) Scott Schedule 130, Band B, tree works, F129
  - k) Scott Schedule 202, additional van, G983
  - l) Scott Schedule 208, tree felling, G991
  - m) Scott Schedule 212, driving lessons, G1071
  - n) Scott Schedule 262, training course, G1200
  - o) Scott Schedule 266, MB Electrical, cherry picker, lighting, G1204
173. Item a) and e), above. These are items of garden equipment bought from Green Stripe. The Applicant contends that Green Stripe is more expensive than other suppliers, but does not adduce any evidence to this effect, nor does this take into account the quality and durability of the garden equipment purchased. The First Respondent indicates that in the past they have bought from other suppliers, but have been disappointed with that equipment. Further, Green Stripe were willing to advance credit, an advantage that has to be weighed in the decision of whom to purchase from. The Tribunal determines that purchasing from Green Stripe is reasonable. These are service charge expense and they are charged at a reasonable level.
174. Item b), above. Ace Construction invoice for £240 to clean out compost bins (2015) and £996 to clean them out twice more, plus laying some stone on the track to the bins (2017). The Applicant asks, why is this firm being used for this purpose? Further, he has no recollection of stone being laid. The First Respondent states that Ace Construction have a mechanical digger, which is used to empty out the compost bays when residents have put non-compostable rubbish into the bays. The Tribunal inspected these bays during the inspection, they are in a remote part of the site, up a long stone covered track that appeared to be in good condition. The bays are open top, open fronted and wide. It would be very easy for residents that wish to do so to act in this way. The use of a mechanical digger would reduce the time spent on emptying the bays, reducing labour times. The fact that the Applicant does not think that stone was laid as per the invoice does not mean that the invoice is incorrect. The Tribunal accepts the evidence of the First Respondent, supported by the invoices and concludes that the work as invoiced was carried out. The Tribunal determines that this is a service charge expense and that it is charged at a reasonable level.
175. Item c), f), h), i) and o), above. All of these items involve MB Electrical in repairing lights or replacing light bulbs or replacing road bollards (the bollards being 15 years old when replaced) in common areas on the site. There are numerous invoices that are detailed as to the work done and there are some work sheets. The First Respondent states that this firm has a cherry picker that is essential for reaching lights on lamp posts as health and safety rules will not permit the use of a ladder. The First Respondent has considered buying a cherry picker, but decided not to do so as this would involve the cost of the vehicle and require additional staff training, additional insurance and additional staff working hours. All work done and

put through the service charge account is properly dealt with, the Applicant has not been charged for work that he should not have been required to contribute to. The First Respondent also points out that security staff make a note of the lamps that need to be changed or repaired and that MB Electricals are only called to attend when there is sufficient work to make the visit cost effective.

176. During the site inspection the Tribunal noted that the site has a great many street lamps that will require a cherry picker when the bulbs are to be replaced. The main roundabout in question is at the entrance to the site, just off the A57 and has four bollards, one on each approach road to it. The Tribunal determines that the work done in these invoices and charged to the Applicant's service charge account is all work that can be charged to this account and is all carried out within a scale of costs that are reasonable.
177. Item d), above. This is an invoice for the purchase of a Kubota tractor for use of the grounds staff on the site. The Applicant states that he could have obtained this tractor at the time that it was purchased at a cost of £1,700 less than the invoice price of £13,824, but the Applicant does not adduce any evidence to substantiate this. The First Respondent answers this on the basis that only this make and model of tractor would permit the fittings already in the grounds staff store to be used. That the tractor was supplied along with a further fitting, a cutter deck that was needed and that there was a significant trade in deal done resulting in a credit note of £8,400 being issued (E310).
178. The Tribunal accepts the fact that trade in deals are never straight forward, sometimes a higher starting price is compensated for by a higher trade in price. The Tribunal determines that this purchase is a service charge cost and that the purchase was concluded in a cost effective manner, such that the cost is reasonable.
179. Item g), above. This is an invoice from Fearn Plant Limited for £5,850, to cover the cost of emptying the compost bays and replacing them. The Applicant contends that this is a manifestly excessive cost, specifying that the Respondents' permitted themselves to be overcharged by this contractor to the sum of £3,245. The Applicant does not adduce any evidence to support this view and does not provide any alternative quotes. The Tribunal inspected these compost bays, there are 6 substantial bays. Mr D. Fernie stated that he had asked a builder by the name of Barker to inspect the bays and had been told that Mr Barker could have done the same work for £1,500 each bay. If that is correct then Fearn Plant Limited did the work cheaper than Mr Barker would have been able to do it (6 x £1,500 is £9,000). In any event the Tribunal gave Mr Fernie the opportunity to provide evidence from Mr Barker on this point, but he did not do so. The Tribunal determines that the this work is chargeable as a

service charge cost and that the cost is within the scale of costs that are reasonable for this work.

180. Item j), above, to which the Tribunal adds Scott Schedule 55 that is clearly objected to on the same point. The Applicant asking why skips are being paid for? There are numerous invoices for the provision of skips from LRCS at a cost of £200 per skip e.g. F447. The Respondents' state that these are hired so that non-compostable waste can be put into them by the grounds staff and disposed of, without going into the compost bays. The Tribunal determines that these are service charge costs and that they are charged within a scale of reasonable costs.
181. Item k), above. This is an invoice for the purchase on a Nissan van, from Mountain Motor Vehicles at a cost of £7,200. Considering the dates provided on the invoice it would appear that the van was less than 4 years old when purchased. The Applicant asks why this was purchased? The Respondents' state that it is an additional vehicle for the use of the grounds staff who have a huge area to cover and this vehicle makes them more mobile. A van was needed to accommodate tools and mowing machines. The Tribunal determines that this purchase is a service charge cost and that the purchase cost is reasonable.
182. Item l), above. There are in fact three invoices from Sarah Mitchell, Tree and Garden Services Ltd, for felling, pruning and general tree work on the site, G991, 992, 993. The challenge to these invoices is that they are addressed to Banks Long, who are management agents appointed by the management company and not addressed to the First Respondent itself. The Tribunal determines that as agents for the First Respondent it is perfectly proper for Banks Long to act in this way. For the avoidance of doubt, the Tribunal determines that this purchase is a service charge cost and that the invoices are charged within the scale of reasonable charges.
183. Item m) and n), above. These are the cost of driving licence theory test for an apprentice gardener and the cost of a training course for a member of grounds staff. The first invoice was paid for as a reward for apprentice completing his apprenticeship and although the Tribunal agrees with the Applicant that holding a driving licence is not a condition of employment the Tribunal determines that it would be advantageous for the First Respondent if this employee could drive around the site. Further, the Tribunal determines that it is reasonable to reward an apprentice in these circumstances with a reward that will also provide a potential benefit to the site. The second invoice is sent to Banks Long, rather than the management company and again the Tribunal determines that this does not matter in so far as chargeability and reasonableness is concerned. It paid for a member of staff to attend college. The Tribunal determines that these costs are service charge costs and that the costs are reasonable.

184. The Tribunal now moves to the fifth head of issues, disputed location of work being done. This covers 22 items on the Scott Schedule:
- a) Scott Schedule 16, work on Marina gate, E240.
  - b) Scott Schedule 17, work on Marina gate, E241.
  - c) Scott Schedule 37 and 40, deep water signs and high visibility coats, F453 and F492.
  - d) Scott Schedule 43, fence repair, F495.
  - e) Scott Schedule 46 and 203, repair water pump, F505 etc.
  - f) Scott Schedule 47, 118, 200, 205, work on Parker's drain, F509, 726, G980 and G987.
  - g) Scott Schedule 76, damage to Marina gate, F608.
  - h) Scott Schedule 100, flags, F689.
  - i) Scott Schedule 115, repair to light at mooring gate 3, F714.
  - j) Scott Schedule 119, repair water pump, F727.
  - k) Scott Schedule 127, landscaping, F591.
  - l) Scott Schedule 128, supply of plants, F 593.
  - m) Scott Schedule 151, repair to pontoon gate, G686.
  - n) Scott Schedule 189, benches, G962.
  - o) Scott Schedule 211, signs, G1070.
  - p) Scott Schedule 229, gate repair, G1110.
  - q) Scott Schedule 258, to sink posts, G1178.

185. This head of issues all refer to the Applicant alleging that work has been done at locations that are not within the common areas of the site and that as a result are not charges that can be considered when calculating the Applicant's service charge costs. The First Respondent states that this is not correct. All works that are charged to the service charge account are on items in common areas. The First Respondent has produced a detailed A1 size plan of the site and for each year under consideration in this case, has marked a different copy of that plan with a reference number allotted to the work done in each Scott Schedule claim. It is necessary to read the Scott Schedule to ascertain the correct map reference number to use, e.g. Marina Gate, Scott Schedule 16 and 17 are both at map reference 11. Scott Schedule 37 and 40 are both at map reference 37 and so on. The plans also show which areas are common areas.

186. The Tribunal went through these Scott Schedule points in the hearing (although separately as we worked through the Scott Schedule in numerical order at Mr D. Fernie's request). The Tribunal considers the Scott Schedule and the plans with map references marked, supported by the evidence of Ms Surphlis, who stated that all lamp post (except those at the health club and Woodcocks) are the responsibility of the First Respondent to maintain. The Tribunal determines that the above items, in paragraph 184 are all in common areas within the site and as such they are all capable (where any charge has been claimed) of being charged to the Applicant's service charge account. They are reasonable charges.

187. The Tribunal therefore determines that items a), b), g), h), i), k), l), and m), above, are all service charge costs that are reasonable.
188. Item c), above. The Tribunal saw and noted the position of 4 such signs, 3 at the request of Mr D. Fernie. All were on the bank side of quay's, we did not see any such signs in the water. It was a hot, bright day and high visibility clothing was not in use but there were a number of high visibility over garments in the grounds mans area. The Tribunal determines that this is a service charge cost, charged at a reasonable level.
189. Item d), above. Scott Schedule 43 was withdrawn.
190. Item e), f) and j), above. The Tribunal accepts the evidence of Ms Surphlis that these pumps and parker's drain are vital as they assist in keeping the site from flooding as a result of storm rain water. The pumps often being referred to as storm pumps. The Tribunal determines that this is a service charge cost, charged at a reasonable level.
191. Item n), above. The Tribunal observed some of the benches that have not yet been replaced. They are a very distinctive design with a wavy seat, but they are made out of metal that is clearly prone to rust and for a 'flag ship' site like this, rusting benches are out of keeping with the rest of the site. The Tribunal determines that replacement of rusting benches is a service charge cost, charged at a reasonable level.
192. The Tribunal accepts Ms Surphlis' evidence to the effect that item o) was an accrual not charged as a service charge cost on that invoice.
193. Item q), above. The Tribunal observed a length of road in the site where these wooden posts had been sunk into the grass at regular intervals along the side of the road, the road surface being marked with double yellow lines. There were competing suggestions as to why this was done and the Tribunal determines that the posts were sunk into the grass to prevent persons from parking with their tyres on the grass and thereby causing an obstruction to the carriageway, in an area already marked with a parking restriction.
194. The Tribunal determines that all the invoices relating to the above items of work have been charged at a reasonable level.
195. The Tribunal now moves to consider the sixth head of issues, where the Applicant alleges that the location in which work has been done has not yet been 'handed over' to Burton Waters Management company and is therefore not to be included is service charge costs.
196. There are 8 Scott Schedule issues in this head of issues:

- a) Scott Schedule 13, gate into quay's, E236
- b) Scott Schedule 71, gate into quay's, F602
- c) Scott Schedule 73, gate into quay's, F604
- d) Scott Schedule 116, lamp post near sales office, F715
- e) Scott Schedule 145, gate into quay's, G862
- f) Scott Schedule 148, repair to gate into quay's, G865
- g) Scott Schedule 264, repairs to lights, G1202
- h) Scott Schedule 265, repairs to lights, G1203

197. The Respondents submit that the distinction being drawn by the Applicant is contrary to the provisions of the lease. The Tribunal, having heard the competing submissions of the Parties and having considered the terms of the lease agrees with the Respondents. Service charges are to be paid for the common areas of the site and once the lessees benefit from a service provided in a common area, even though development of the whole area may still not be completed, then it becomes a service charge cost (see relevant provisions of the lease, above). The Tribunal's example as referred to above is a good guide, erecting a lamp post in a common area is a development cost, there may be snagging issues which would still be a development cost, but once switched on and working properly, repair would be a service charge cost.

198. The Tribunal determines that the distinction being drawn by the Applicant is incorrect, whether a part of the site has been fully developed and 'handed over' is not a relevant consideration to liability to pay service charges.

199. Item a), above. The Respondents, concede that this invoice for £81.90 has been incorrectly charged to the Applicant's service charge account and is dated 23/6/2015. As such the percentage multiplier for the Applicant's service charge contribution was 0.2205% (paragraph 6, above). The Applicant is therefore entitled to a refund to his service charge account of  $£81.90 \times 0.2205\% = 18$  pence.

200. The Tribunal has considered all the remaining invoices in this head of issues and confirms they all repairs to items that appear to be in common areas and as such they are chargeable as service charge costs to the Applicant's service charge account. The Tribunal determines that all the invoices relating to the above items of work have been charged at a reasonable level.

201. The Tribunal now considers the seventh head of issues, being entitled by Mr Hardman, queried invoice - speculative opposition.

202. There are 35 Scott Schedule points in this head of issues:

- a) Scott Schedule 15, wireless connection for security, E238
- b) Scott Schedule 44, waste bin, F469
- c) Scott Schedule 49, bike shelters, F511
- d) Scott Schedule 55, skip hire, F521
- e) Scott Schedule 58, sign repair, F547
- f) Scott Schedule 67, ICO fee, F557
- g) Scott Schedule 93, water heater, F666
- h) Scott Schedule 106, re-line road markings, F704
- i) Scott Schedule 109, compost signs, F707
- j) Scott Schedule 111, Lindec, F709
- k) Scott Schedule 114, 5 benches, F713
- l) Scott Schedule 120, second hand tipper van, F729
- m) Scott Schedule 121, hedge trimmer, F730
- n) Scott Schedule 123, pressure washer, F732
- o) Scott Schedule 140, car removal, F813
- p) Scott Schedule 142, ICO, F817
- q) Scott Schedule 146, crash into gates, G863
- r) Scott Schedule 175, painting security office, G936
- s) Scott Schedule 182, Beal Homes recharge, G956
- t) Scott Schedule 184 and 185, flags and ropes, to flag poles, G958
- u) Scott Schedule 191, T Star (G969), Lindec (G970), G Lidget (G971)
- v) Scott Schedule 196, lighting, G976
- w) Scott Schedule 197, 198 and 199, jet wash contribution, G977
- x) Scott Schedule 209, skip hire, G994
- y) Scott Schedule 247, bus shelter, G1164
- z) Scott Schedule 249, painting 36 lampposts, G1166
- aa) Scott Schedule 250, line markings, G1167
- bb) Scott Schedule 259, skip hire, G1179 to G1183
- cc) Scott Schedule 267, lighting, G1205
- dd) Scott Schedule 7, visitor causing damage to barrier, E228
- ee) Scott Schedule 276, fee for accountant, G1212

203. Mr Hardman is correct to group these Scott Schedule items together as challenged invoices, however, the Tribunal does not agree with Mr Hardman's further description of 'speculative opposition'. The Tribunal deals with these points in the same way as it deals with all points on the Scott Schedule.

204. Item a), above. E238 is an invoice for work done by Lincoln Security to replace a wireless system that was not functioning correctly with a wired connection for an access control system, which after it had been modified worked better. The detailed invoice indicates the work that was carried out. The Applicant asks what is the cost for? The question has been answered. The work being required for security of the site is clearly a charge that can be brought into the Applicant's service charge demand and is reasonable. The Scott Schedule also seeks to challenge invoice E239, but this is clearly

marked as a quote in respect of the same work and did not result in a service charge cost.

205. Item b), above. F496 is an invoice for a galvanised steel dog waste bin at £235.79. This was purchased using the Banks Long credit card and included the ground pole and fixings so that it could be fitted without any more expenditure. The Applicant suggests that this is 28% more expensive than it should have been, but without producing any evidence to support this opinion. The cost is clearly one that can be charged to the service charge account and is reasonable.
206. Item c), above. This relates to bike shelters paid for by a grant from Lincolnshire County Council. There is no service charge cost.
207. Item d), above. This invoice relates to a skip for non-compostable rubbish, there are many such invoices. The issue has already been dealt with elsewhere in this Decision. It is a service charge cost and is reasonable.
208. Item e), above. This is an invoice from Allen Signs and clearly states the work done and the location of the signs repaired as a result of the theft of metal lettering from the signs. The Applicant asks what signs were involved? The Tribunal inspected the signs, they are 10 foot high metal signs on either side of the road at the entrance to the site and it is evident that lettering has been replaced. It is a service charge cost and is reasonable.
209. Item f), above. This is a fee of £35 for the renewal of registration of a data controller, expiring on 14/1/2016, required under the Data Protection Act. The Applicant contends that no such registration was required. The Tribunal determines that on the face of E557 renewal of registration was required. It is a service charge cost and is reasonable.
210. Item g), above. The Applicant refers to two separate invoices for work done to the same water heater and suggests that work is being duplicated and that one invoice should not be part of the service charge account. The Respondent explains that this is two separate contractors working on the same item, but completing different repairs that complement each other. Both items of work could not be done by one contractor because different work specialities were involved. A float valve required a plumber and Pipework Services were used. The element required an electrician and MB Electrics were used. The Tribunal determines that the invoices are service charge costs and are reasonable.
211. Item h), above. An invoice from T Star Solutions Limited for £1,803.60 for relining the parking places in the main car park and similar lining at Ellison's Quay, at the site. The Applicant asks where the work was done and that has been explained. It is a service charge cost and is reasonable.

212. Item i), above. An invoice from Allen Signs, for £99.62 for supplying two compost bin signs. The Applicant asks where the signs are and the Respondents indicate that they are on the compost bins. It is a service charge cost and is reasonable.
213. Item j), above. An invoice from Lindec Ltd that indicates that work has been done as per a prior quote, cost £1020. The Applicant asks what the invoice is for and where the work was carried out? The Respondents reply that the work (painting) was carried out to two camera poles, pedestrian gates on Park Lane and a bin on The Landings, giving map references to the site plans to further pin point where the painting was done. A reference is given to F589 which is the original quote, at the same cost. It is a service charge cost and is reasonable.
214. Item k), above. This is an email quote from Broxap Ltd for the supply of 5 new benches in a similar style to the ones already on site, the originals no longer being available and intended to replace existing benches when needed. The Applicant's request for information has been dealt with. The benches were later purchased, but this is only a quote and as such there was no service charge cost.
215. Item l), above. This is an invoice for a second hand Vauxhall Movano Tipper vehicle for use by the grounds staff, purchased from David Roark Landscapes Ltd, at a cost of £6,900. The Applicant challenges the decision to buy a second hand vehicle and suggests that maintenance costs will be higher on a second hand vehicle. In cross examination the Applicant asks about the cost of hiring a similar vehicle. The Respondents considered hire but are aware that this vehicle will be handled in such a way, loading and unloading heavy equipment, that will cause damage to the vehicle so that hire was not cost effective as repairs would have to be undertaken at the end of the hire period. The cost of such a vehicle new is in the region of £23,500. Purchase of this vehicle was thought to be the most cost effective manner of supplying an extra vehicle for use by the grounds staff. There has not been any additional expenditure on maintenance. The Tribunal determines that it is a service charge cost and is reasonable.
216. Item m), above. This is an invoice from Green Stripe Garden Machinery for a hedge trimmer and some grease at £362.86. The Applicant suggests that a similar model could be purchased at £170 (without producing any evidence to support this contention). The Respondents contend that costs on line are checked, but that purchase from a local company ensures that if there are problems with the machine they will be promptly dealt with. The Tribunal determines that it is a service charge cost and is reasonable.
217. Item n), above. This is a quote for the cost of supply of a pressure washer that is used by both the first Respondent and Moorings. At this stage there

was no cost as this is only a quote, but at a later stage the pressure washer was purchased and as can be seen from F732 the cost was to be shared in equal parts with Moorings. This is the medium sized pressure washer which the Tribunal has seen and is clearly well used. The Tribunal determines that this was not a service charge cost at the time that this quote was issued, but that when purchased, it would be a service charge cost and would be reasonable.

218. Item o), above. This is an invoice for £120 from Lincoln Auto Locks. The Applicant seeks an explanation for the invoice. The Respondents state that a Ford Focus S597 SFH was abandoned in the car park of the site. There was a delay in dealing with this as the DVLA had to be contacted. After that the vehicle was removed and this invoice relates to call out and provision of a key to gain access to the vehicle. The Tribunal determines that it is a service charge cost and is reasonable.

219. Item p), above. This is a fee of £35 for the renewal of registration of a data controller, expiring on 14/1/2017, required under the Data Protection Act. The Applicant contends that the email requiring this payment is dated 7/8/18, however the Tribunal can see that the email is dated 3 December 2016. Further, the Applicant suggests that no such registration was required. The Tribunal determines that on the face of F817, renewal of registration was required. It is a service charge cost and is reasonable.

220. Item q), above. This is an invoice from Lincoln Security for £318.48 for repairs to the main barrier at the site after someone had driven into it. The Applicant contends that the driver responsible should have been made to pay for the damage. The Respondents state that the whole of the number plate of the offending vehicle could not be read. The Tribunal determines that it is a service charge cost and is reasonable.

221. Item r), above. This is an invoice from Lindec Ltd for £2,706 and it details the painting done covering labour and materials. The Applicant contends that this cost is extremely expensive. The Tribunal has inspected this office and noted that the entrance stairs are inside a curved exterior wall leading up to the office rooms, this area would have required high walls above stairs to be painted (see inspection above for a full description). The Tribunal also saw that there is a large area to be painted. The Tribunal determines that it is a service charge cost and is reasonable.

222. Item s), above. This is Beal Homes recharging to the First Respondent of the cost of agricultural drainage rates of £113. This covers the whole site. The Tribunal determines that it is a service charge cost and is reasonable.

223. Item t), above. These Scott Schedule items refer to flags and ropes being fitted to the flag pole in the site, at a cost of £300. The Applicant contends that a charitable donation should not have been made to the boat club and

asks where the flag pole is? The Tribunal saw the flag pole, roped with three flags during the inspection. The Respondents refer to G958 and G959. The Respondents' state that the cost of materials is detailed on G959, these to be supplied by the boat club who then had members fit the ropes and flags. Previously this has been done by outside contractors, but by allowing the boat club to deal with this a substantial saving of about 50% has been achieved. The boat club has not charged for labour and as such the First Respondent decided to donate £63.57 to the boat club's funds (G958), in effect to compensate them for their time. The Tribunal considers this to be a wholly reasonable approach to reducing service charge costs. The Tribunal determines that it is a service charge cost and is reasonable.

224. Item u), above. This Scott Schedule reference relates to three quotes from T Star Road markings for the provision of double yellow lines, speed roundels and line markings, the work to be done at some point in the future (G968). Also included is G970, Lindec Ltd and G971, G Lidget Builders. These are also quotes for work to be done at some stage in the future. The Tribunal determines that there is no cost to the service charge account as a result of these quotes.
225. Item v), above. This is a recharge of service charge costs from Burton Waters Moorings Ltd to the First Respondent in respect of 18 light columns that are situated as shown in the plan at exhibit 44 of Ms Surphlis's second statement. These are within the common area of the site and although the service charge cost is being met by the First Respondent, Burton Waters Moorings Ltd pay a contribution to those service charges. The Tribunal determines that it is a service charge cost and is reasonable.
226. Item w), above. The Respondents state that G977 is an invoice from Burton Waters Moorings Ltd to the First Respondent in respect of the largest jet washer and a loading ramp (so that the jet washer can be loaded onto a vehicle) bought by Burton Waters Moorings Ltd . These were seen in the Tribunal's inspection. It seeks to charge half the cost of the large jet washer and the loading ramp to the First Respondent as both companies use it and had agreed to pay half the purchase price. G978 is the purchase invoice for the jet washer. G979 is the invoice for the ramp. The Tribunal accepts the explanation as provided by the Respondents as to why this proportion of the costs were recharged to the First Respondent. The Tribunal determines that it is a service charge cost and is reasonable.
227. Item x), above. These invoices G994 to G1003 are all for the hire of skips from LRCS at a sum of £200 each in 2017. This is a point that has been dealt with earlier and the Tribunal accepts that the skips are provided for staff of the First Respondent to dispose of non-compostable rubbish. The Tribunal determines that it is a service charge cost and is reasonable.

228. Item y), above. This is an invoice from B and C for £3,178.80. The Applicant contends that since the invoice is addressed to Banks Long, it should not be a service charge at all. The Tribunal determines that such an approach is wrong because Banks Long are agents of the First Respondent. In any event the Tribunal accepts the explanation given by the First Respondent that this cost was for the provision of a bus shelter the whole cost being met by grants from various organisations as listed by the Respondents'. The Tribunal determines that there is no cost to the service charge account as a result of this invoice.
229. Item z), above. This is an invoice, dated 31 May 2018, from Lindec Ltd for £2,592 for painting 36 lamp posts and Ellison Quay gates. The Applicant asks which lamp posts were painted and suggests that no such painting was done. The Respondents state that the work was done and paid for. It is not possible now to state exactly which lamp posts were painted as they are painted on a 5 year cycle. The Tribunal has seen a great many lamp posts at the site. They are tall and will require a cherry picker or similar device to permit them to be painted. The Tribunal accepts the evidence of the Respondents' as there would be no reason to pay for work that had not been done. The Tribunal notes that the lamp posts in question will need repainting in less than 2 years, so looking for freshly painted lamp posts would not have assisted on this point. The Tribunal determines that this is a service charge cost and it is reasonable.
230. Item aa), above. This is an invoice from T Star Line Markings for relining car parks and installing new markings, labour and materials £2,878. The Applicant makes the same point as to the addressee of the invoice as in Scott Schedule point 247, already dealt with above (paragraph 228). The Applicant asks where the work was carried out and the Respondents detail the work and where it was done. The Tribunal determines that this is a service charge cost and it is reasonable.
231. Item bb), above. These invoices G1179 to G1183 are all for the hire of skips from LRCS at a sum of £220 each in 2018. This is a point that has been dealt with earlier and the Tribunal accepts that the skips are provided for staff of the First Respondent to dispose of non-compostable rubbish. The Tribunal determines that it is a service charge cost and is reasonable.
232. Item cc), above. This is a recharge of service charge costs from Burton Waters Moorings Ltd to the First Respondent in respect of 18 light columns that are situated as shown in the plan at exhibit 44 of Ms Surphlis's second statement. These are within the common area of the site and although the service charge cost is being met by the First Respondent, Burton Waters Moorings Ltd pay a contribution to those service charges. The Tribunal determines that it is a service charge cost and is reasonable.

233. Item dd), above. E228 is an invoice from Lincoln Security for repairs to the main site vehicle access barrier for £284, a collision being caused by ice on the road surface. The Respondents state that they did not have the registration number of the vehicle responsible. The Tribunal determines that it is a service charge cost and is reasonable.
234. Item ee), above. E1212 is an invoice for an interim accountancy charge (year ending 31 December 2017) from Saul Fairholme Chartered Accountants to the First Respondent, for £2,640 with E1213 being the final additional charge of £1,560 for that year. The Applicant contends that the total cost of £4,200 is £2,000 too expensive, but does not serve any supporting evidence for that proposition. The Tribunal notes that this is a mixed use site of considerable size and complexity in relation to the various entities involved. The Tribunal determines that it is a service charge cost and is reasonable.
235. The Tribunal moves on to consider the eighth head of issues as prepared by Mr Hardman, car hire.
236. There are 6 Scott Schedule points in this head of issues:
- a) Scott Schedule 20, Car hire with Arval, E368 to E382
  - b) Scott Schedule 83, Car hire with Arval, F624 to F631
  - c) Scott Schedule 161, Car hire with Arval, G888 to G897
  - d) Scott Schedule 162, vehicle repairs, G898
  - e) Scott Schedule 164, vehicle repairs, G900
  - f) Scott Schedule 236, remove logo, apply logo, G1118
237. Item a), b) and c), above. This is the hire of a vehicle for the use of the patrolling security officer on the site, the rental hire charge being £282.44 per month (E368). The Applicant seeks to challenge this hire car contract on the basis that it is too expensive (although no alternative quotes are provided by the Applicant). Further, that two sets of car seat covers should not have been purchased. The Respondents' state that the First respondent was limited to the use of Arval because they were the only hire car company that was prepared to lease a car to them in the absence of a credit history. The hire agreement commenced before the Applicant purchased the long lease to the property. With regard to the seat covers, they were purchased at £8.34 in January 2015 and again at the same cost in April 2015, because the seat covers had split and were worn and needed replacing. The Tribunal accepts the Respondents evidence and determines that these costs are chargeable as service charge cost and that they are reasonable.
238. Item d) and f). The hire contract continued with an upgrade in September 2017 to a different vehicle. The Applicant challenges the extra cost of hire charges due to upgrade. The Applicant also challenges invoice G898, when the hire company invoiced the cost of repairs to the hire vehicle that was

returned when the upgrade occurred at a cost of £485.18 (the invoice details the breakdown of this cost). Further, invoice G1118 is an invoice for £328.21 from Allen signs and it relates to the upgrade of vehicle, taking the security logos off the vehicle to be returned and placing new security logos on the upgrade.

239. The Respondents contend that the upgrade vehicle is a hybrid car and as such is cheaper to run so that the small increase in hire charges at 70 pence per month is more than offset by the cheaper running costs. With regard to the return of the first vehicle to the hire company, the management company had the foresight to remove the security logos from the vehicle and pay for them to be placed on the upgraded vehicle by Allen Signs. By doing this there may have been a saving to the service charge account (as the hire company were not in a position to charge for that work) but Allen Signs had to be paid for the work that they had done. With regard to invoice G898, the returned vehicle was in a condition that the hire company levied this extra charge. The charge had to be paid. The Tribunal accepts the evidence of the Respondents. It is clear that all of these charges are such that they are chargeable under the terms of the lease and that they are reasonable.

240. Item e), above. The Tribunal determines this issue in favour of the Applicant. It is more complex than the remainder of the issues under this head and the Tribunal deals with this issue at paragraph 321 of this Decision.

241. The Tribunal moves on to consider the ninth head of issues, insurance. There are 11 Scott Schedule references in this head of claims.

- a) Scott Schedule 21, motor insurance, E383, £763.38
- b) Scott Schedule 52, commercial insurance, F516, £7,770.92
- c) Scott Schedule 64, Chattertons McKinnells Solicitors, F553, £300
- d) Scott Schedule 125, commercial insurance, £8,024.39
- e) Scott Schedule 163/204, motor insurance x 3 vehicles, G899 and G986, (same invoice) £3,034.94
- f) Scott Schedule 201, additional car, motor insurance, G981, £666.35
- g) Scott Schedule 206, commercial (site) insurance, G998, £8,335.85
- h) Scott Schedule 237/252, motor insurance x 3 vehicles, G1119, £3,515.35
- i) Scott Schedule 257, commercial (site) insurance, G1175, £8,999.57
- j) Scott Schedule 256, commercial (site) insurance, Bluefin G1176 £7,953.79

242. The above Scott Schedule points (mostly) refer to insurance arranged by Bluefin Insurance Brokers or Jelf Insurance Brokers. The insurance is either for the use of vehicles by the First Respondents' staff or commercial insurance to cover the various potential liabilities involved in the running

of the site, cover for CCTV, access control equipment, public liability, etc. Where two Scott Schedule numbers are allocated to the same invoice that is due to the fact that in error, two Scott Schedule items refer to the same invoice. The Respondents point out that insurance has been arranged through a professional insurance broker and that the Respondents' are entitled to rely upon the broker to find the best insurance for the needs of the Respondents, that is not necessarily the cheapest insurance available.

243. Further, the Respondents seek to rely upon the learned authors of Commercial and Residential Service Charges (2013)(10-08) "In general terms, the courts have been astute to avoid construing a lease in a way which enables the tenant to scour the market to find a cheaper policy than the one to which they are being asked to contribute and to refuse to pay for the more expensive policy obtained by the landlord".
244. The Tribunal agrees with the Respondents submission that they are entitled to rely upon the expertise of their insurance broker to obtain for them the best insurance cover to deal with their needs. This may not necessarily be the cheapest insurance cover available, there are a great many factors to be considered in deciding what the best insurance cover is and price is only one of them. These insurance costs are clearly service charge costs and they fall within a scale of costs that are reasonable.
245. Point c), above. This does not relate to insurance and it appears to the Tribunal that this has been added to the incorrect head of claims. This relates to an invoice from Chattertons McKinnells Solicitors, for £300, invoice F553. The invoice details the work done by the solicitors regarding advice on the company law rights of tenants and is dated 22 July 2015. The Applicant challenges this invoice on the basis that he contends that this work has already been done by Joanne Costall Consultancy Ltd at invoice F552, that invoice relates to the structure and legal standing of the First Respondent.
246. As a result of cross examination by Mr Fernie the witness, Ms Surphlis has dealt with these two invoices at pages 10 and 11 of her additional statement. In summary The First Respondent's evidence is to the effect that preliminary advice was sought from the Joanne Costall Consultancy Ltd. This lead onto written advice (that is privileged) being obtained from Chattertons McKinnells Solicitors. It is not a duplication if work, although the preliminary work lead onto the written advice being sought. The Tribunal accepts this evidence. The Chattertons McKinnells Solicitors invoice is a service charge cost and it was reasonable to pay it.
247. The Tribunal moves on to consider the tenth head of issues, health and safety. This area includes 12 Scott Schedule items:

- a) Scott Schedule 23, Arion retainer, E387, £2,880

- b) Scott Schedule 25, G. P. report, £94.30
- c) Scott Schedule 85, Arion retainer, F633, £2,880
- d) Scott Schedule 101, sunscreen, F691, £109.92
- e) Scott Schedule 171, first aid box, G917, £9.83
- f) Scott Schedule 173/242, fire extinguishers, G919/G1150, £294
- g) Scott Schedule 243, Hunt Sykes retainer, G928 and G1151, £240 per month
- h) Scott Schedule 213/263, gritting, G1072/G1201, £5,086.24
- i) Scott Schedule 214, De-fibrulator pads, G1073, £113.76
- j) Scott Schedule 244, Lincsafe, G1153, £2,400

248. The Respondents state that health and safety at the site has been overseen with the assistance of three specialist contractors during the four years being considered in this case. Arion Training and Development Limited [item a) and c), above], then Hunt Sykes H and S [item g), above] and then Lincsafe Health and Safety Management Service [item j), above]. The Respondents submit that a site of this size requires the assistance of specialists in this field and that the services provided by these firms is essential, being; advice, audits, visits and policies. The Tribunal notes that the third specialist contractor is slightly cheaper than the first two. The Respondents state that part of the cost of these specialist contractors is met by Burton Waters Moorings Limited, paying 35%. The Tribunal accepts the evidence of the Respondents who could not possibly be expected to be in charge of health and safety at a marina with deep water, motor vehicle access and power tools in use without such specialist assistance. These costs are clearly a service charge costs and are reasonable.

249. Item d), above. This is sun screen provided for staff of the First Respondent who work outdoors. They may help themselves when the need arises. It will help to prevent sun burn. Item e) above is a first aid box, the need for which is obvious. Item f), above, relates to fire extinguishers, which must be provided if the First Respondent is so advised. The Tribunal notes that invoice G1150 that requires payment for 9 extinguishers is endorsed to the effect that 3 of them are to be paid for by the Moorings Company at £98 each and a BACS payment was made. Item i), above is the replacement of de-fibrulator pads after use. All of these costs, allowing for the Moorings payment of £296, are service charge costs and are reasonable.

250. Item b), above. This is the cost of a medical report from the G. P. of a security staff member who wished to return to work after an operation and the First Respondent wanted to make sure that the employee was in fact fit to work. The Tribunal accepts the evidence of the Respondents. This is a service charge cost and it was reasonable to pay the G. P's. invoice.

251. Item h), above. These costs relate to gritting of the roads on the site. Prior to this the First Respondent had relied on grounds staff to attend to gritting when this was required. This was arranged on an ad-hoc basis. A

decision was then taken, accepting health and safety advice, to engage a contractor to attend when required to deal with this work. The Applicant challenges this cost on the basis that the contract that he has seen is partly redacted and is signed by Ms Surphlis, the Applicant raising the agency point that has been raised and dealt with earlier. The Tribunal has not had its attention drawn to the contract and does not feel that it necessary to see it. The Tribunal accepts that the Respondents acted on health and safety advice and can see that there is a substantial advantage in employing a contractor to provide this service rather than requiring staff members to drive on slippery roads on an ad-hoc basis to get to the site and then spread grit. The Tribunal accepts Ms Surphlis's evidence that when this contract for gritting was made other companies were asked to tender. The Tribunal determines that these are service charge costs and they are reasonable.

252. The Tribunal moves on to consider the eleventh head of issues, the management company office. This area includes 21 Scott Schedule items:

- a) Scott Schedule 26, council rates, E401, £2,800
- b) Scott Schedule 28, supplies, E403 to E414, £2,872.43
- c) Scott Schedule 29/90, fire alarm connection, E415-419, F660, £1,190.74
- d) Scott Schedule 30, air conditioning, E420, £192
- e) Scott Schedule 34/245, rent, E426-429, G1154 £15,360
- f) Scott Schedule 36, water rates, E441, £1,351.45
- g) Scott Schedule 53, insurance, F517, £352.30
- h) Scott Schedule 88, supplies, F654, £250
- i) Scott Schedule 91, air conditioning, F661, 662, 664, £384
- j) Scott Schedule 94, rent, F668, £15,360
- k) Scott Schedule 96, water rates, F680, £286.47
- l) Scott Schedule 98, council rates, F681, £3,097.60
- m) Scott Schedule 124, milk and fuel, F733, £2,404.08
- n) Scott Schedule 170, council rates, G916, £3,095.60
- o) Scott Schedule 180, stationary, G952, £85.24
- p) Scott Schedule 207, insurance, G989, £376.75
- q) Scott Schedule 241, cleaning, G1149, £132
- r) Scott Schedule 253/255, insurance, G1173, £878.38

253. Item a), l) and n), above. These are all non-domestic rates bills from West Lindsey Council. The Applicant asked questions about E401, which is clearly the second page of a rates payment bill and as a result, in Ms Surphlis's additional evidence the whole bill is produced (exhibits 5 and 6). The Tribunal determines that these are service charge costs and that they are reasonable.

254. Item e) and j), above. These invoices are from Burton Waters Moorings Limited who have sub let parts of two buildings along with rights of access to the First Respondent for use of their security and grounds staff. The rent

was at this time £15,360 per year. It appears that this was subject to a rent review by a Mr Tony Gravell, but in any event once the rent has been set in a contract it has to be paid. These are service charge costs and it was reasonable to pay any such rent charges.

255. Item g), p) and r), above. These invoices are from Burton Waters Moorings Limited to the First Respondent for payment of their proportion of the buildings insurance on the sub-let buildings. Once this had been agreed the First Respondent had to pay its share of the insurance. These are service charge costs and it was reasonable to pay any such insurance contribution charges. Scott Schedule 255 is a duplicate of Scott Schedule 253.

256. Item f) and k), above. This is a slightly more complex arrangement that is most easily described as the First Respondent pays these water rates, with a small proportion relating to the use of water in the sub-let buildings by the First Respondent's staff. The remainder of the cost is recharged to and paid for by Burton Waters Moorings Limited. To see how this works, E401 is a water rates bill for £265.57 and actually refers to the equipment store used by grounds staff. E443 is a re-charging of £254.41 to Burton Waters Moorings Limited, deducting the cost of water used by the staff of the First Respondent, £11.26. The Tribunal accepts that all water rates in these two Scott Schedule points are dealt with in this way. These residue charges relate to water used by staff of the First Respondent and are service charge costs. These costs are reasonable.

257. Item b), h), m) and o), above. These invoices relate to fuel, purchased from the nearest petrol filling station, being the Co-Op and the purchase of coffee, tea, milk and sugar. Item o), above relates to stationary. The fuel is used in the security patrol vehicle and the Tribunal accepts that the tea, coffee, milk, sugar and stationary are used by staff of the First Respondent's staff on the site. These are clearly all sums that can be charged as a service charge. The Applicant contends that there could be savings of approximately 20% if the First Respondent made more of an effort to source the cheapest supply of each item needed and that stationary could be bought in bulk, reflecting a saving. There is no evidence adduced by the Applicant to support these propositions.

258. The First Respondent, in relation to obtaining supplies in general, observes that this falls to be carried out by the security patrol officer, hence the nearest source is used for each item, the Deli on site for the milk, the nearest petrol filling station etc. The Tribunal can see that there may be a saving if the cheapest source of supply is used, but that this would be difficult to quantify. However, the Tribunal also agrees with the First Respondent that the security patrol officer should be patrolling this gated and secure site. As such any saving in purchasing items from a cheaper source is likely to be offset by the additional time and fuel consumed by

achieving that saving., whilst also reducing security cover. It is not an unreasonable management decision to obtain these consumables in this way. The Respondent also contends that although stationary could be bought in bulk, the security office does not have huge storage areas for the storage of bulk bought stationary and that it is better to purchase that which is needed. It is not an unreasonable management decision to obtain stationary in this way. The Tribunal determines that these costs are reasonable.

259. Item d) and i), above. These invoices relate to air conditioning. The security office has air conditioning that can heat or cool the air in the office. The First Respondent has a contract for maintenance of the system with Adcock Refrigeration and Air Conditioning. They charge £192 per visit and there are two visits per year. The Applicant challenges this as being too expensive, stating that a normal charge would be £125 for this work, but without any evidential support for this assertion. The Tribunal determines that these charges are service charge account charges and that they are reasonable.

260. Item c), above. These invoices relate to the fire alarm in the building housing the security office. The ground floor of that building remains in occupation by Burton Waters Marina Limited as a sales office. Invoice E415 is to pay £72 to Freedom Fire and Security to check the fire alarm systems. It was then discovered that the two systems were not linked and Freedom suggested the work that would be required to link the systems together. E417 and E418 are for work done checking various fire alarm and extinguisher services. E419 is an invoice from Freedom Fire and Security for linking the fire alarm systems together. The Applicant poses the question, did the Marina office contribute to these expenses? The Respondent refers the Tribunal to F660 which is an invoice from the First Respondent to Burton Waters Marina Limited for 50% of the cost of linking the two systems together. The Tribunal accepts that where a contribution was required from Burton Waters Marina Limited, such a contribution was paid. These costs are chargeable as service charge costs and they are reasonable.

261. Item q), above. This is an invoice for the deep clean of the security offices, by Grant's Cleaning, G1149, cost £132. The Applicant asks why are service charges paying an external company to clean, when the grounds staff could have cleaned, in the same manner as they are hired out to Burton Waters Moorings Ltd . The First Respondent points out that this was a deep clean following the replacement of a carpet, an expert cleaning company being paid to carry out the work. The Tribunal accepts the representations of the First Respondent, that in effect a specialist deep clean was required. The Tribunal determines that this is a service charge cost that is reasonable.

262. The Tribunal moves on to consider the twelfth head of issues, the management company credit card. This area includes 13 Scott Schedule items:

- a) Scott Schedule 31, first aid course, E422/423, £450
- b) Scott Schedule 80, monitor, F615, £303.01
- c) Scott Schedule 89, items charged to debit card, F656/659 etc, £138.40
- d) Scott Schedule 99, various purchases, seven invoices listed, £317.24
- e) Scott Schedule 122, car repair, F731, £156
- f) Scott Schedule 160, monitors for security, G887, £722.34
- g) Scott Schedule 166, replacement microwave, G911, £50.40
- h) Scott Schedule 167, replacement vacuum cleaner, G912, £52.79
- i) Scott Schedule 168, replacement kettle and others, £59.92
- j) Scott Schedule 172, replacement vacuum cleaner, G918, £76.93
- k) Scott Schedule 178, stationary, G948, £81.34
- l) Scott Schedule 179, tea bags, G949, £76.16
- m) Scott Schedule 238 and 254, Soldo card fee, G1120, £21.95 per month

263. The First Respondent contends that since it is a company without a credit rating it cannot easily obtain credit and cannot obtain a credit/debit card. As such its agent Banks Long operates a credit/debit card and has recently also brought into use a Soldo card that is used for the purchase of fuel. The Tribunal accepts these facts as being part of good management of the site, permitting small value purchases to be conducted at the suppliers till, by staff members, subject to Banks Long scrutiny, but reducing accounting work. The Tribunal reminds itself that Banks Long, in addition to dealing with the credit card statements and till receipts, inspect the invoices coming through their office and carry out regular bank reconciliation checks which are then provided to the accountants who prepare the service charge accounts. The Tribunal determines that this is sufficient scrutiny of the cards in use. Any minor expense that is therefore encountered by running these two financial cards is a reasonable expense. Many of the costs in this head of issues have been purchased by use of such a card. This paragraph deals with item m), above and generally the whole head of issues.

264. Item a), above. These two invoices are to pay for three staff members, who are named on the invoices, to attend first aid courses. The Applicant contends that cheaper first aid courses could have been obtained, but without any evidence to support this assertion. The Respondents' reply to the effect that these courses were booked to fit in with working hours of the persons attending, ensuring that no overtime had to be paid. The Tribunal accepts the evidence of the Respondents. These are service costs and they are reasonable.

265. Item b) and f), above. Two invoices for 3 monitors purchased for use in the security office. The Tribunal has inspected this office and there is a bank of such monitors in use, it is an obvious fact that on occasion they will need to be replaced. The Applicant asks where the monitors are to be used? The question has been answered. The Tribunal determines that these are service charge costs and that they are reasonable.
266. Item c), d), g), h), i), j), k) and l, above. This multitude of invoices involve credit card purchases of small value consumables or small kitchen/office electrical items. The Tribunal has already dealt with the use of the credit card, approving of this. An example being item j), being a replacement Hoover after the first had broken. The Tribunal accepts the Respondents' evidence that these are all for use of the staff at the site and determines that they are all items that can be charged to the service charge account and that they have been purchased at a reasonable costs.
267. Item e), above. This is a credit card payment for repair to a damaged diesel fuel cut off switch. The First Respondent states that the grounds staff were not aware that a new vehicle had such a switch and accidentally damaged it. It was repaired by JM Motors. The Applicant asks for an explanation as to what was paid for? This has been answered. The Tribunal accepts the evidence of the Respondent. This is a service charge cost and it is reasonable.
268. The Tribunal moves on to consider the thirteenth head of issues, building works (maintenance and repair), G. Lidgett. This area includes 16 Scott Schedule items:
- a) Scott Schedule 32, various repairs, E424, £455.40
  - b) Scott Schedule 39, block paving, F491, £2,664
  - c) Scott Schedule 41, painting footbridge, E493, £3,816
  - d) Scott Schedule 51, build bike shed, F514/515, £1,747.44
  - e) Scott Schedule 57, signpost, F546, £750
  - f) Scott Schedule 92, various repairs, F665, £3,127.20
  - g) Scott Schedule 102, paving repairs, F700, £475.20
  - h) Scott Schedule 103, paving repairs, F701, £552
  - i) Scott Schedule 104, repairs to fences, F702, £516
  - j) Scott Schedule 183, re-block paving, G957, £1,529.10
  - k) Scott Schedule 186, disconnect electricity supply linked with crossing, G964, £917.60
  - l) Scott Schedule 187, removal of pedestrian crossing, G965, £1,911.30
  - m) Scott Schedule 188, fill in pot holes, G966, £1,247.50
  - n) Scott Schedule 190, redress lead flashing, G968, £612.90
  - o) Scott Schedule 191, various repairs to gates, fencing and pot-holes, G971
  - p) Scott Schedule 251, various repairs, G1169, £950.48

269. These are invoices for work done at the site, usually on repairs and maintenance, although item d) is a new build. A large amount of this type work has been carried out by G. Lidgett Builders Limited. The First Respondent contends that this is a general builder used by Banks Long (Banks Long being agents of the First Respondent) on numerous sites, when work appropriate to G. Lidgett's skills is being undertaken. Banks Long are able to check the invoiced price across sites where other contractors have been used and the hourly rate for labour (£40 per hour, see invoice F491 and later, £43.50 per hour G966) as charged by G. Lidgett is competitive. G Lidgett know the site and therefore where their work fits into the overall picture. Banks Long do not think it appropriate to obtain alternative quotes for items of work on this site when they are of low value in terms of the service charges for the site and work is being undertaken by contractors that are used often, across sites.

270. The Respondents' point out that no quotes have been supplied by the Applicant, so that there is nothing that the Tribunal can consider the actual costs against. The Applicant generally contends that where Banks Long has been invoiced for the work done, that this should not be a service charge cost as Banks Long are not a Respondent. This has already been dealt with, that proposition is incorrect as it ignores the fact that Banks Long are agents for the First Respondent. Further, the Applicant makes a general contention that the works are too expensive.

271. The Tribunal determines that as a general proposition on this site, managed as it has been up this point by Banks Long as agents for the First Respondent, there is nothing wrong with Banks Long relying upon its huge experience in administering service charges on numerous sites to decide that G. Lidgett is charging reasonable sums for work that G. Lidgett is undertaking. The Applicant, although challenging the reasonableness of these costs, does not adduce any evidence to support this challenge. As such the Tribunal determines, that across this head of issues of service charge costs, the service charges are charged at a reasonable cost. Where charges should not be included into the service charge calculation at all, because they are not chargeable under the terms of the lease, the Tribunal is satisfied that they have not been charged to the Applicant's service charge account. An example of this are item a), above, invoice E424, this contains a charge for refitting lead flashing above shops which was deleted by being crossed through and was deducted from the invoice cost, reducing the service charge cost from £677.40 to £455.40. Secondly, G957 entails a reduction being made relating to work to be paid for by Burton Waters Landings. This deals with items a), b) and e) to p), above, but in addition item o), above, has also been dealt with individually at paragraph 224 of this Decision.

272. Item c), above. This relates to painting the footbridge that is situated over the entrance canal into the marina, often referred to as the marina gate.

This is maintenance of a footbridge that the Tribunal accepts to have been built upon the instructions of Eastman Securities Limited when the public footpath along the side of the Fossdyke canal was cut through so that the marina could be connected to the Fossdyke. The Applicant asks to whom does this belong? and challenges the cost of this work, being £3,816. The invoice is dated 6 May 2015.

273. The bridge is at map reference 41 on the A1 size plan of the site numbered as page 212, but separate from the evidential lever arch files. That plan shows the public footpath, which was once almost certainly a tow path, going alongside the Fossdyke canal, approaching the site from the direction of Lincoln, going along the side of the site and then continuing past the site away from Lincoln. The plan marks on it the common areas of the site and the footpath and this bridge are not so marked, the plan therefore indicating that the footpath is not a common part of the site. The Tribunal inspected the bridge, footpath and the exterior fence of the gated compound at this location, taking photographs.

274. During the hearing when this point was dealt with at some length, it appeared to the Tribunal that the Respondents have some doubt as to whom the bridge belongs. The additional statement of Ms Surphlis, brought about by cross examination from the Applicant, contends that the bridge is a common part of the site and that therefore it falls to be maintained by the First Respondent as part of the Applicant's service charge costs.

275. The Tribunal does not agree with the Respondent on this point. The Tribunal determines that the bridge was built upon the instructions of Eastman Securities Limited to enable the marina to be linked to the Fossdyke canal, whilst maintaining the public footpath. The bridge is part of the public footpath that goes past the site, and on the balance of probability the Tribunal determines that the bridge is not part of the site and is not a common area of the site. The Tribunal determines that the charge of £3,816 cannot be charged as a service charge cost to the Applicant's service charge account. In 2015 the Tribunal has been informed that the Applicant was required to pay 0.2205% of service charge costs and therefore £8.41 must be credited to the Applicant's service charge account.

276. Item d), above. These two invoices relate to a bike shed being purchased and erected on the site, they are linked to Scott Schedule point 49, also referring to this bike shed. The Applicant asks if there were alternative quotes obtained for the work and disputes the whole amount. The Respondents contend that this bike shed was built with a grant from the Lincolnshire County Council at no cost to the Applicant's service charge account. The Tribunal accepts this evidence, there was no cost to the service charge account.

277. The Tribunal moves on to consider the fourteenth head of issues, Banks Long and Company. This area includes 22 Scott Schedule items:

- a) Scott Schedule 35/69, management and estate fee for 2015, E430, £36,000
- b) Scott Schedule 62, debt chasing letters, F551, £1,900
- c) Scott Schedule 95/143, management and estate fee for 2016, F672/F818, £36,000
- d) Scott Schedule 134, 215, 268, surveyor apportionment F804, G1074, £600, £240, £480
- e) Scott Schedule 136, revised handbook, F807, £123.66
- f) Scott Schedule 137, 274, debt chasing fees, F808, G1211, £2,196, £1,062
- g) Scott Schedule 138, F809, court fees £72
- h) Scott Schedule 169/177, 226, management and estate fee for 2017, G3015/G942, G1085 £36,000
- i) Scott Schedule 217, Sage pension module, G1076, £144
- j) Scott Schedule 221, 223, 225, room hire for meeting with residents' group G1081, 1082, 1084, £88, £85, £31
- k) Scott Schedule 246, 277 management and estate fee 2018, G1157, G1214, £40,200
- l) Scott Schedule 270, printing handbook, G1207, £357

278. Items a), c), h), and k), above. These are charges for the management services provided by Banks Long, charged as annual fees for management of the service charges and estate. Items b) and f), above deal with Banks Long fees for chasing debts relating to service charge payments. Banks Long have been involved in management of the site since 2007. The Respondents refer to a management agreement (C61), dated 8 April 2014, appointing Banks Long to the position of management agents, being agents for the First Respondent (this presumably being a re-appointment). At that date the fixed fees for work in relation to the service charge applicable to the Applicant was £24,000 and £6,000 for management of the estate, making a total of £30,000. In 2015, 2016 and 2017 the fixed fees for work in relation to the service charge applicable to the Applicant had increased to £30,000, with £6,000 in respect of the estate, making a total of £36,000 per annum. In 2018 the total fee was £42,000 per annum. Additional fees for debt chasing are permitted by the RICS Code and the lease and these are charged for by Banks Long at £15 per letter, prior to this appointment these letters were charged for at £50 per letter by Wilkin Chapman LLP.

279. The Applicant asks when these fees were reviewed and what they are for, challenging the whole amount of each fee. These management fees can all be charged under the terms of the lease, this fact not being challenged by

the Applicant. The Respondent has explained what the fees are for. The Tribunal is dealing with a huge site with a complicated structure of entities contributing to the service charge account, requiring the services of a chartered surveyor to calculate the proportion of service charges that each entity should pay. The First Respondent employs a permanent staff of grounds personnel and security officers at the site, operating a grounds store and a security office. The Security Officers utilise a patrol vehicle, security gates, barriers and CCTV, enabled at night by lighting in common areas so that the CCTV can monitor the site. Grounds staff operate vehicles and a huge quantity of equipment. This is one of the most complicated sites to manage that the Tribunal members have encountered. The Respondents' suggest that when enquiries were made they were quoted an alternative fee of £90,000 per year by another management agent.

280. The Tribunal notes that a fixed fee is the approved method of charging for this type of work pursuant to Code 3.3 of the RICS Code and that debt chasing letters are expected to be subject to an additional charge. The Tribunal notes that £15 per letter is substantially cheaper than the charges demanded by the solicitor prior to Banks Long taking on this task. The Tribunal notes that total expenditure on the site is approximately £400,000 per year (volume D, page 18 total expenditure for 2016, £407,553 and for 2015, £399,247). The Tribunal determines that the charges of Banks Long are within the scale of fees that are appropriate for this type of work and are reasonable.

281. Item d), above, to which the Tribunal adds Scott Schedule 59 at £600. These fees are to pay Mr Banks, the chartered surveyor, for his work in apportioning the sum to be paid by each entity on the site towards the service charge account applicable to the Applicant. It appears to be the case that the Applicant was not aware that this was happening at the time that this case commenced, he instead believing that services were being provided free of charge to other users of the site. The Applicant's challenges in Scott Schedule 59 and 134, are in fact a requests for information. The Applicant's challenges in Scott Schedule 215 and 268 ask why a fee is being paid for apportionment?

282. The Tribunal has considered these fees. It is clearly essential that this work is done, in that payment towards the service charge account applicable to the Applicant by other users of the site reduce the Applicant's payments. This is a management expense for work that cannot be undertaken by Banks Long themselves without criticism being levelled at them that they are not sufficiently independent to decide the level at which contributions by other entities should be made. As such these are fees that are chargeable as a service charge cost. These fees are reasonable.

283. Item e) and l), above. These are fees for the printing of a revised handbook and issuing a copy to every tenant. The Applicant states that the

handbook has nothing to do with residents and this should not be a service charge cost. The Respondents disagree, the handbook is supplied to all residents, this revised copy included in it a direction that residents are not to keep their dinghies on their lawns. The Tribunal accepts the Respondents' evidence and determines that these are costs for which service charges can be charged and that the costs are reasonable.

284. Item g), above. This a court fee. The applicant asks why it is charged to the service charge account and was the fee recovered from the Defendant? The Respondents have replied that the fee was recovered from the defendant and that it was not charged to the service charge account. The Tribunal accepts this evidence. The Tribunal determines that there was no service charge cost.

285. Item i), above. This was withdrawn by the Applicant during the hearing.

286. Item j), above. These are invoices that relate to meetings between management and the residents' association. It is clearly in the best interests of the Applicant as a resident that such meetings take place. The Applicant appears to be suggesting that they should take place at a venue that is elsewhere than as used. The Tribunal determines that it is entirely up to the First respondent to choose a reasonable venue for such meetings. These are service charge costs and the costs are reasonable.

287. The Tribunal moves on to deal with the fifteenth head of issues, there are 17 Scott Schedule issues in this head.

- a) Scott Schedule 60, pumping station, F549, £210 Scott Schedule 63, JCC charges, F552, £125
- b) Scott Schedule 64, Chattertons, F553, £300
- c) Scott Schedule 65, JCC charges, F554, £250
- d) Scott Schedule 66, lease breach, F555/556, £2918.68 and £1,698.48
- e) Scott Schedule 68, JCC advice, F558, £187.50
- f) Scott Schedule 86, Andrew Jay, F645, £300
- g) Scott Schedule 132, JCC advice, F802, £930.93
- h) Scott Schedule 133, JCC advice, £500
- i) Scott Schedule 139, JCC advice, F810, £874.20
- j) Scott Schedule 141, JCC advice, F815, £745.25
- k) Scott Schedule 216, JCC advice, G1075, £1,750
- l) Scott Schedule 222, JCC advice, G1078, £1,098.49
- m) Scott Schedule 224, JCC advice, G1083, £1,140.50
- n) Scott schedule 269, GDPR training, G1206, £100
- o) Scott schedule 271, GDPR training, G1208, £495
- p) Scott Schedule 272, JCC advice, G1209, £200

288. JCC referred to above is the Joanne Costall Consultancy Limited, Directors of which are Ms Jo Costall (the daughter of Mr Rick Costall who

is a Director of the First Respondent) and Mr James Hazel (husband of Ms Jo Costall). Ms Costall and Mr Hazel were equity partners in Chatterton McKinnell solicitors, before setting up JCC. They provide strategic advice to customers, one of which is the First Respondent (and Banks Long) JCC are retained on a written retainer. They can assist in legal advice falling short of matters that would require the involvement of a practicing solicitor. The First Respondent also instructs the solicitors firm Wilkin Chapman LLP, when the need arises.

289. The Applicant challenges the invoices from JCC asking why a relative of Mr Rick Costall is being used at all? Asking if quotes have been obtained from other firms who could do this work and raising the possibility that work is being duplicated, because sometimes Wilkin Chapman LLP will also become involved. All of the invoices from JCC are challenged in their totality. The Applicant does not provide any alternative estimates for comparison.
290. The Respondents point out that JCC charge half the fee for work done by its Directors, when compared with Wilkin Chapman LLP. As such the Respondents' contend that JCC are very good value. There is no duplication of work, but sometimes a solicitors firm will be needed to continue in a matter that has been subject to advice from JCC.
291. The Tribunal can see no reason why the First Respondents and Banks Long should not be able to instruct JCC when their skills are needed. True, the First respondent could go straight to Wilkin Chapman LLP, if the matter is one that might have to involve a solicitor at the end of the day, but this would only serve to increase the service charge that the Applicant is required to pay. The Tribunal determines that the use of JCC, where the management of this site considers this to be appropriate, is a money saving device and is chargeable as a service charge cost under the fifth schedule, paragraph 2.2 of the lease.
292. The Tribunal has seen four time sheets for work done by the Directors of JCC, F803 (item h)), F811 (item j)), F816 (item k)) and served as additional evidence during the hearing to item m), all in this head of issues above. It appears to the Tribunal that much of the work done by JCC relates to the practicality of running the site (strategic), rather than quasi-legal. The Tribunal determines that it is unlikely that this kind of strategic quasi-legal advice could be obtained at a similar price elsewhere. The Tribunal determines that the invoices raised by JCC are all at a reasonable cost. This deals with items, b), d), f), h), i), j), k), l), m), n), and q), above.
293. Item a), above. This relates to a pumping station that is off the site, but to which access is essential by the grounds staff as it helps to prevent the site from flooding. Wilkin Chapman LLP provided advice in this matter and it

- was paid for by Beal (Homes) Development Limited. This was then re-charged to the First Respondent as it was a management expense.
294. The Applicant asks for an explanation as to why this happened and an explanation has been given. The whole amount of £210 is challenged. This is advice relating to an essential management matter and is a service charge expense. The cost is reasonable.
295. Item c), above. The Applicant challenges the whole of this work, invoiced by Chattertons McKinnells solicitors to the First Respondent on the basis that it charges for work done already by JCC (invoice at page F698). The First Respondent submits that it is not the same work and refers the Applicant to the invoices.
296. The Tribunal consults the two invoices. F698 is from JCC for advice relating to the structure and legal standing of the First Respondent at a cost of £125. F553 is an invoice for £300 from Chattertons McKinnells for research and advice on the company law rights of tenants of properties which are under the management of the management company, a company limited by guarantee; reviewing and considering the company constitution documents of Burton Waters Management along with the lease documentation and advising accordingly. As a result of questions asked by Mr D. Fernie, Ms Surphlis covers this in her additional statement and states that it is not a duplication of work but it is work that naturally flowed from the initial work done by JCC. The advice given by Chattertons McKinnells is subject to legal privilege.
297. The Tribunal accepts the explanation given by Ms Surphlis. There was no duplication of work. The cost is one that can be charged as a service charge and is reasonable.
298. Item e), above. This relates to a breach of a covenant in a lease by a resident who had a shed constructed in her garden. To set the scene fully, item d), above is JCC advice relating to this issue (that item has already been determined as chargeable and reasonable). These two invoices are the interim cost and final invoice in relation to taking the tenant responsible to court for breach of the lease. The matter was successfully resolved in favour of the First Respondent. The First Respondent had decided to make an issue out of this breach because it set down the marker that garden sheds would not be permitted on the site. The Tribunal determines that it was perfectly reasonable for the covenants in the lease to be enforced and accepts the evidence given that these costs were not recovered as a result of the settlement of this case. This is an expense that can be charged to the service charge account and it is a reasonable expense.

299. Item g), above. Invoice F645 is from Andrew Jay solicitors who acted for a security guard in a dispute between the guard and management. The dispute was settled and part of the settlement was that this invoice be paid by the First Respondent. As such this is a charge that can be charged to the service charge account and it is a reasonable expense.
300. Item o) and p), above. These invoices relate to GDPR training for some personnel linked to the site. Invoice G1206 is to pay for the attendance of Ms Surplis at a training course on GDPR, attended also by some personnel from other firms on the site. Invoice G1208 is the purchase of GDPR materials, referred to as a 'generic GDPR suite' from JCC so that they could then be copied and distributed to staff that needed access to such materials. The Tribunal determines that these are reasonable management costs that can be charged to the service charge account and it is a reasonable expense.
301. Having completed the 15 heads of issues as designed by Mr Hardman, the Tribunal went through the Scott Schedule to make sure that all items on the Scott Schedule have been dealt with. The Tribunal discovered that they have not all been dealt with and moved on then to determine the remaining Scott Schedule items.
302. Scott Schedule item 5. This was withdrawn by the Applicant during the hearing.
303. Scott Schedule item 14. This refers to an emergency call out of Lincoln Security to put new codes into security equipment after a power outage. The Applicant challenges the whole amount of £306 on the basis that the security officers on site should have been able to deal with this themselves. The Respondents' were unable to find the invoice to which this relates, despite a reference number being provided by the Applicant, it is however clear what the issues in this item are. The Respondents state that due to staff holidays and a change of staff, the codes necessary for the security officers to deal with this themselves were not available to them, as they would normally have been. As such there was no alternative but to call out Lincoln Security. The Tribunal accepts the assertions of the Applicant. It is clear that an error has been made by the First Respondent's manager in permitting the security staff to be put in a position that meant that they could not deal with this power outage without assistance. As such the Tribunal determines that this expense could easily have been avoided by the management agent and that it is therefore unreasonable for this to be charged as a service charge cost. The full amount of £306 must be credited to the Applicant's service charge account. This occurred in 2015 and therefore the sum of  $£306 \times 0.2205\% = 68$  pence must be credited to the Applicant's service charge account.

304. Scott Schedule 27. This invoice, E402 is from Bunzel Cleaning and Hygiene Supplies, £70.48 for toilet tissue and hand towels. The Applicant makes the point that the toilet tissue is of good quality (Cushelle), asks why expensive toilet tissue is being purchased, who monitors it and who should be paying for it? The whole cost is challenged. The First Respondent states that this is for use in the security office for staff and anyone who is permitted to visit the office. It is monitored by the staff. It is a service charge cost. The Tribunal accepts the First Respondent's evidence and determines that these are reasonable management costs that can be charged to the service charge account and it is a reasonable expense.
305. Scott Schedule item 33. This is said to be an invoice from MB Electrical for the sum of £102. The Applicant gives a reference to the invoice but the Respondent was unable to find the invoice during the hearing. The Applicant contends that this amount should not have been spent because it refers to work being done to a diffuser on the zebra crossing on the site, despite there being evidence in the case that the crossing lights were not working at all during 2014 to 2017. The Respondent does not make any clear response to this submission being uncertain as to which invoice is being referred to. The Applicant asked questions about this issue, the Respondent indicating that additional evidence will be served, but it has not been. The Tribunal determines that this was an unreasonable expense as there was no point in instructing an electrician to carry out work on a crossing light that was known to be inoperative. The full amount of £102 must be credited to the Applicants service charge account. This occurred in 2015 and therefore the sum of  $£102 \times 0.2205\% = 23$  pence must be credited to the Applicant's service charge account.
306. Scott Schedule item 61. This is an invoice from Frameworks for £594 to pay for architectural plans for the First Respondent to show the CCTV camera positions and then to provide an up to date handover plan. The whole amount is disputed with a request for information that has been provided. The Tribunal accepts the First Respondent's evidence that these plans were required for management purposes and determines that these are reasonable management costs that can be charged to the service charge account and it is a reasonable expense.
307. Scott Schedule item 79. The Applicant withdrew this claim during the hearing.
308. Scott Schedule item 82. The Applicant submits that these 5 pages of invoices refer to proposed works to the CCTV system. The Respondent agrees, these are quotes relating to future work and no cost was charged to the service charge account until such work was carried out against invoices then provided. The Applicant withdrew this claim.

309. Scott Schedule item 84. This relates to car insurance arranged by Bluefin, invoice F632, for £817.60. The whole amount is challenged, apparently on the basis that no alternative quotes for insurance were obtained. The Respondent submits that this insurance involved 12 members of staff being permitted to use the motor vehicle in question and that it was arranged by an insurance broker. The Tribunal has already determined that it is reasonable for the Respondent to rely upon an insurance broker to test the market and get the most suitable insurance cover available for the customer. The Tribunal accepts the First Respondent's evidence and determines that this is a cost that can be charged to the service charge account and it is a reasonable expense.
310. Scott Schedule item 97. The Applicant seeks an assurance that unspecified electricity bills do not involve the supply of electricity to any other entity. The Respondent gives that assurance, there was one bill that did need to be recharged to Beal Homes and this was done. This is not a challenge to a service charge cost.
311. Scott Schedule item 107. This relates to invoice F705 for £258, which is the First Respondent re-charging the cost of a repair to a bollard in the site to the driver responsible for damaging it. It is addressed to the driver, who's details are not material. The Applicant suggests that it is an invoice for the repair by G. Lidgett, which is not correct. The Tribunal accepts the evidence of the Respondent and the invoice and determines that this was not a cost to the service charge account.
312. Scott Schedule item 110. This refers to invoice F708, already dealt with under a different invoice number, but duplicated again for accounting purposes. Both Parties agree that it is a duplicate and the Applicant asks why this was done, that question having been answered. This is not a challenge to a service charge cost.
313. Scott Schedule 113. This relates to invoice F712, a quote for the painting of a gazebo situated in a common area on the Moorings. The Respondent contends that it would have been a service charge cost if the work had been carried out as it would be a repair to a gazebo in a common area, but in fact the work was not carried out because upon inspection it was not approved, the gazebo being in a reasonable condition. The Tribunal accepts the Respondents' evidence. This is not a service charge cost.
314. Scott Schedule 126. This relates to contributions to insurance payments being made relating to the lease between Burton Waters Moorings and the First Respondent, of the security office and grounds store. This situation has already been dealt with in 2015 service charge year. This invoice is for £365.78 to be paid by the First Respondent to Burton Waters Moorings who insure the buildings. The Tribunal accepts the First Respondent's

- evidence and determines that this is a cost that can be charged to the service charge account and is a reasonable expense.
315. Scott Schedule 129. This relates to invoice F597, for £780, from B and B Tree Specialists. The Applicant asks where the work was carried out and disputes the whole amount. The Respondent states that the work was carried out on Park Lane from the main gate, along the road and behind houses along the edge of the towpath. A map reference is provided for clarity. The Respondent asserts that this is common land within the site. The Tribunal accepts the First Respondent's evidence and determines that this is a cost that can be charged to the service charge account and is a reasonable expense.
316. Scott Schedule 131 (a) to (l). This is almost identical to the points raised in Scott Schedule 56 for service charge year 2015, dealt with above, but now refers to service charge 2016. The Applicant makes a general request for production of all 2016 invoices to Beal Developments Limited, Burton Waters Moorings Limited and Burton Waters Marina Limited. The Respondent replies that they were all contained in the documents inspected by the Applicant previously. The Applicant then raises the same challenges as have already been raised in 2015, but now for 2016, that in effect other entities on the site should be paying more into the service charge account than they have been required to pay through apportionment. The Tribunal agrees with the Respondent that this is in effect a repeat of the same issues as raised in Scott Schedule item 56 and as such does not fall to be dealt with in detail again. The Tribunal determines that it is not appropriate to raise speculative requests for information at this late stage and that there are no refunds to the Applicant's service charge account subject to this Scott Schedule item.
317. Scott Schedule 135. These relate to the fees of JCC as already dealt with earlier. This time the advice given to the First Respondent relates to security officers. There is an invoice and a breakdown of time spent on this work F805, invoice for £939.20 and F806, time log. As already determined, the work of JCC is charged at a reasonable sum and is chargeable as a service charge cost. The Tribunal makes a similar determination in this issue.
318. Scott Schedule 149. An invoice for £199.56. This has been conceded by the Respondents. This relates to service charge year 2017. The service charge account of the Applicant must receive a credit of £199.56 x 0.2084% = 42 pence.
319. Scott Schedule 154 was withdrawn by the Applicant during the hearing.
320. Scott Schedule 161. The Tribunal had thought that this point had been missed and not determined, until it embarked upon the double check

described in paragraph 331 of this Decision. In fact the point has been dealt with at paragraph 237, in favour of the Respondents.

321. Scott Schedule 164. This invoice is for the insurance excess of £250 after repairs were carried out to the security vehicle that had been damaged due to the negligence of a security officer, G900. Due to the requirements of the rental agreement this repair had to be done by an authorised repair centre. The Tribunal determines that since this is damage caused by a security officer, that officer should have paid the insurance excess. It is not a service account cost. A refund must be made to the Applicant's service charge account. This relates to service charge year 2017. The service charge account of the Applicant must receive a credit of  $£250 \times 0.2084\% = 52$  pence.
322. Scott Schedule 174. Invoice G925 is the monthly fee for health and safety advice from Hunt Sykes H and S. The remainder of the invoices are similar, for subsequent months, making a total of £2,640. The Applicant contends that this work is of little value, the Tribunal disagrees and has already determined that in a site of this nature health and safety advice and monitoring by an expert is essential. The Tribunal determines that this is a cost that can be charged to the service charge account and is a reasonable expense.
323. Scott Schedule 176. These invoices relate to the rent due to Burton Waters Moorings Ltd from the First Respondent, and include a back payment of rent after a rent review resulted in an increase of the rent. The Applicant asks when the rent was reviewed, the reply is that it was reviewed under the terms of the lease by a Mr Gravell. There was then a further contention brought by the Applicant that this was not an at arm's length review. The Tribunal notes that the lease does include a rent review clause and does not intend to consider whether or not Mr Cavell was truly independent as this issue has been raised at too late a stage. The Tribunal has already considered this issue in prior years and determined that the rent is a service charge cost and is reasonable.
324. Scott Schedule 181. This is an invoice, G995, from Lincolnshire County Council to Banks Long for £360 for a road safety audit relating to the zebra crossing on the site. As a result of complaints about the zebra crossing the Respondents organised a road safety audit of the crossing and were advised that it should be removed. This is an invoice in relation to this issue. The Tribunal accepts the evidence of the Respondents and determines that this is a service charge cost that is reasonable.
325. Scott Schedule 218. This is an invoice from H F Financial Advisors Limited for a payment of £70, continuing work in relation to Workplace Pension Reforms and intermediation. The Applicant disputes the full amount asking what other quotes were obtained. On this occasion the

- Respondents' reply that an additional quote was obtained and that this firm were the best value. The Tribunal accepts the evidence of the Respondents and determines that this is a service charge cost that is reasonable.
326. Scott Schedule 219. The Applicant's reference is to page 996, that is G1079 in the evidential bundles. The invoice is from JCC, but is not for The amount suggested by the Applicant, is it for £1,098.49. The Applicant challenges the invoice because of the close family relationship between Mr R. Costall and his daughter. The Respondent states that JCC work at half the price of Wilkin Chapman LLP. Banks Long are surveyors and need advice in relation to matters outside their area of expertise, that is what JCC provide. The Tribunal accepts the evidence of the Respondents and determines that this is a service charge cost that is reasonable.
327. Scott Schedule 220. This is an invoice from Banks Long, G1080, £1,782 for debt chasing letters. The Applicant refuses to pay this amount because he suggests that this should be covered by the annual management fee. The Respondents simply refer to Scott Schedule point 62, where this has already been determined. The Tribunal points out that the basic management fee does not include debt chasing letters, it only includes the service charge demand and instructing a debt collection agency, RICS Code, third edition, Code 3.4. The Tribunal accepts the evidence of the Respondents' and determines that this is a service charge cost that is reasonable.
328. Scott Schedule 232. This is an invoice from Lincoln Security to the First Respondent, G1113, charging £66 for work done to the pontoon gate. The Applicant refuses to pay this on the basis that it should be paid by Burton Waters Moorings Limited. The Respondents agree and state that it was recharged to Burton Waters Moorings Limited. The Tribunal accepts the evidence of the Respondents and determines that this invoice having been recharged to Burton Waters Moorings Limited, is not a service charge cost.
329. Scott Schedule 261. This does not relate to an invoice. The Applicant contends that time sheets of staff (presumably grounds staff, but this is not made clear) show that they are called upon to clean toilets for Burton Waters Moorings Ltd on Bank Holidays, when they should be paid extra. However, Burton Waters Moorings Limited are not required to pay anything extra. This causes a loss to the service charge account. The Respondents' reply that the Respondents do not pay extra hourly rates for Bank Holiday working, so that no loss is caused because of this and refers generally to Scott Schedule point 56. The Tribunal accepts the evidence of the Respondents and determines that there is no loss caused to the service charge account.

330. Scott Schedule 275. The Applicant states that this refers to an invoice with an inspection reference of 423, this equates to an evidence bundle reference of G1211, an invoice for debt chasing letters, not the invoice being referred to by the Applicant. The Respondents speculate that the Applicant meant to refer to a different reference number, suggesting an inspection reference number, but do not then include that page in the evidential bundle. The Applicant seeks to challenge an invoice from JCC for £675, asking for information as to what was being paid for and some information is provided by the Respondent. This was not dealt with during the hearing, as the Tribunal ran out of hearing time before this was reached. The Tribunal has checked the Applicant's submissions, dated 20 July 2021 but has not found anything to assist with this point. The Tribunal having considered invoice G1211, as referred to by the Applicant determines that this does not relate to Scott Schedule 275. The Tribunal has already considered JCC invoices and found that they are service charge costs and that they are reasonable. There is nothing in this Scott Schedule point that changes the Tribunal's prior determination on JCC invoices.

331. The Tribunal, having now dealt with all 278 issues on the Scott Schedule moves on to check the determinations made against the Scott Schedule, modifying the Scott Schedule by adding the paragraph numbers in the Decision that deal with the determination of each Scott Schedule issue. The amended Scott Schedule is attached to the Decision as annex 1. This is provided for the benefit of the Parties so that they will more easily be able to find the paragraphs that deal with a particular point. It also demonstrates that all Scott Schedule points have been dealt with.

332. The Tribunal determines that the following amounts must be credited to the Applicant's service charge account:

• Scott Schedule 13, Decision paragraph 199, (2015)	£0.18
• Scott Schedule 41, Decision paragraph 274, (2015)	£8.41
• Scott Schedule 14, Decision paragraph 303, (2015)	£0.14
• Scott Schedule 33, Decision paragraph 305, (2015)	£0.23
• Scott Schedule 149, Decision paragraph 318, (2017)	£0.42
• Scott Schedule 164, Decision paragraph 321, (2017)	£0.52
Total	£10.44

333. The Applicant asks the Tribunal to consider making an order, pursuant to section 20C of the Landlord and Tenant Act 1985, on his own behalf and latterly seeks to extend this to include other tenants. Such an order would prevent the landlord from including some or all of the costs incurred in connection with these proceedings in the calculation of service charge costs for the named tenants. The Tribunal is also asked to consider making an order pursuant to the Commonhold and Leasehold Reform Act 2002, schedule 11, part 1, section 5A, to reduce the liability of named tenants from the liability to pay administration charges in respect of litigation costs.

334. In respect of both applications the Tribunal determines that there is no good or sufficient reason to extend the protections provided under these provisions to any person other than the Applicant, so the application to add other tenants to this part of the case is refused.
335. The Tribunal notes that the claim is for 278 areas of service charges to be reduced or extinguished over four service charge years. The Tribunal has determined that there will be six reductions of service charges resulting in the First Respondent crediting the sum of £10.44 to the Applicant's service charge account. As such the Applicant has substantially failed to establish a case against the Respondents. Further, the Applicant only attended the final hearing of this case during its first 2 days, although the case has been listed with his availability in mind. Further, when in attendance at the hearing the Applicant failed to take any active part in the proceedings, not giving any instructions to his lay case presenter and permitting his representative to run the case, rather than just present it for the Applicant. The Tribunal determines that it not just, equitable or reasonable to make all the other residents of this site pay for the litigation costs of this case, whilst exempting the Applicant from them. No orders are made.
336. This case has in part proceeded whilst the Covid-19 pandemic has been in progress. The only effect that this had on the case is that instead of there being a hearing in a Tribunal room with all interested persons present in the hearing room, there has been a quasi-hearing. The Tribunal arranged for the Parties and representatives to be present in the hearing room (limiting this to allow for Covid-19 restrictions), but with two witnesses being called to give evidence via a video link. In fact it was not necessary for either witness to give evidence. The Tribunal has monitored this and is satisfied that no injustice has been caused by the changes brought about by the Covid-19 pandemic, to the Parties in this case.
337. Three other cases have been stayed whilst awaiting the outcome of this case. The stay on those cases will be lifted three months after this Decision is sent to the Parties. This delay is designed to accommodate the possibility of appeals.

### **Decision**

338. The Applicant has already paid service charges for service charge years 2015 and 2016. The First Respondent must now credit to the Applicant's service charge account with the sum of £10.44 and when that has been done the Applicant must then, without delay, pay the remainder of the service charges demanded for service charge years 2017 and 2018.

339. There are no orders made pursuant to section 20C of the Landlord and Tenant Act 1985, or the Commonhold and Leasehold Reform Act 2002, schedule 11, part 1, section 5A.

340. Appeal is to the Upper Tribunal. Any Party wishing to appeal against this Decision or any of the Decisions taken in the documents annexed to this Decision have 28 days from the date that the Decision is sent to the Parties to deliver to this First-tier Tribunal a written application for permission to appeal. Such an application must state the grounds of appeal, the particulars of each ground of appeal, the paragraph numbers of the Decision that are appealed against and the result that is sought by raising the appeal.

Judge Tonge

Date this Decision and annexes sent to the Parties, 15 September 2021

Annex 1, the Scott Schedule

Annex 2, the Decision (strike out application) made on 3 April 2019

Annex 3, the Decision (strike out application) made on 6 February 2020

Annex 4, the Directions of 22 December 2020

**ANNEX 1  
SCOTT SCHEDULE**

	<b>Applicant's comments</b>	<b>Respondents' comments</b>	<b>Paragraph in the Decision</b>
	<b>2015</b>		
1	<p>There is a cost of two SIA Licences of £528 [1]- one of whom is for Sue Waudby at a cost of £264, the only Sue Waudby known is a director of Beals Homes, whom is not an employee of Burton Waters Management company, and has no necessity for an SIA Licence to be paid for by Leaseholders service charge funds. Banks Long have advised they were inspected by SIA, and that Ms Waudby was going to become a director, we asked for proof of such inspection and confirmation in the company paperwork that Ms Waudby was going to be a director; none has been provided. We asked for sight of the other two Directors licences -none provided. This cost of the licence paid for by Leaseholders, should be reimbursed as Ms Waudby gained a credit and benefit for herself, at a full cost to Leaseholders, and the Landlord has failed to provide any further information to support their reply in two years. Ms Waudby SRA licence provides no benefit to the leaseholders within the service charge, and was a wasteful cost. £264 should be reimbursed to the service charge</p>	<p>When we were inspected by the SIA, Sue Waudby was to become a director of the management company in place of a previous director. The SIA insisted that she, along with Richard Beal and Richard Costall, hold Non-frontline SIA licences. This is a legal requirement. Copies of the licences have not been provided because the SIA have a website and their licence checker can be used by anyone to check if someone holds a licence and/or what type. The answer to this was given to Mr Fernie and as part of a previous complaint by him to Property Ombudsman [225]</p>	138

2	<p>There is also concern that Leaseholders are paying for SIA security licences for staff, which is highly unusual, as it is normal within the industry for individuals to pay for such licences themselves, and claim full tax relief. There has been a high turnover of security staff, these last 3 years, within security and it is requested how many staff have been employed in this period, where leaseholders have paid for SIA Licences and they have left, even those licences which have been paid for as renewals. I do not agree to any SIA Licences been paid for any staff via service charge costs, any licences paid in 15/16/17/18 such should be funded themselves and they should be able to claim appropriate tax relief. All SIA Licences paid for in the 15/ 16/ 17/ 18 period should be credited back into service charge funds.</p>	<p>Security staff at Burton Waters are paid minimum wage which is below wages paid by other security companies in the area. We know this as the security provision has been tendered to other companies to quote in previous years. Therefore, we pay the SIA licence fee of £220 which lasts for three years and equates to £0.03 per hour that each security officer works over the licence period. When we employ staff, we must make sure that they each hold an SIA licence. For full time staff we then pay for them as and when they need renewing. As part of security staff contracts there is provision that if the company pays for a SIA licence for a staff member and they leave a proportion is repaid back to the company by the employee. The % repaid is dependent on how long after paying for the licence they leave.</p>	138
3	<p>We cannot find an audit of Key fobs, which all residents use for entry into private residential areas, we see purchase receipts for the fobs, at a cost of purchase for each fob of £3.50 plus vat {see page 10 invoice 115695}. The key fobs are charged at £24. There are numerous key fobs bought in periods 15/ 16/ 17/ 18 and it is not known how many were in stock as of 1/1/15. The sale of such is recorded by hand written notes by security, whom also issue refunds for returned key fobs when residents leave the development, but the number of fobs purchased and those sold, do not seem to correlate, there seems to be more key fobs bought than sold. This is poor monitoring and account management of such, which is clearly open to abuse. The applicant needs to understand why a profit is being made on Key Fobs. The applicant has been made aware security were asked on or</p>	<p>Please provide proof of the applicant's allegations in regard to 150 key fobs being taken by Mr Richard Costall. In regard to key fobs in 2015, 2 key fobs per property were issued to every property sold on The Quays. When a fob is damaged or breaks it is replaced. The difference between the sale price and cost price of the fobs pays for this. Please also note that the sale of the fobs is included in the accounts as a credit against the cost of access control. Charging individual leaseholders is an administration cost, not a service charge. If the leaseholder hasn't been charged, he can't challenge it.</p>	148, 149

	<p>around this time to hand over a box of over 150 key fobs to XXXXXXXX (name redacted by Judge Tonge) and were never returned or paid for. It is believed XXXXXXXX (name redacted by Judge Tonge), then uses these fobs {paid for by service charge funds}, to be allowed to be sold via XXXXXXXX (company name redacted by Judge Tonge) to boat holders to access the marina and their own exclusive car parks -for a profit. The applicant is concerned that monies are not fully accounted for; in regard to the key fobs and as to cost, stock and sale price and that misappropriation of such, exists. Flowing there from the applicant requests an independent audit of such for the period of 15/ 16/ 17/ 18.</p>		
4	<p>It is also further noted that security staff {fully paid for by service charge funds} deal with {by selling upon behalf of Mr Rik Costall and his company Burton Waters Moorings Ltd} "utility cards" for electric and water to boat owners, whom are exclusive customers of Burton Waters Moorings. Security staff are monitoring and dealing with boat owners issues and enquiries, costing security considerable time and resources. No charge is made for these services provided, despite such security employment costs being fully funded by service charge funds. Burton Waters Management Ltd has clearly failed to invoice for this time spent by security, for the periods 15/16/17/18 { and presumably for many years}, which based on feedback from security staff, can be on average 90 minutes a day taken up, with dealing with Burton Waters Moorings utility cards and other issues - there should be a charge of £25 per hour plus vat to Burton</p>	<p>Burton Waters Moorings pay service charge (£16,000 per annum) the same as all leaseholders on site. Their percentage is worked out by an independent surveyor and takes into account their use of the services on site. This is why their percentage is the same as other large users of the onsite services. Due to this we do not agree that extra charges should be made to BW Moorings for sale of fobs and electric cards out of office hours. Please provide details of which security staff you have been asking questions of.</p>	141

	Waters Moorings, as per follows:		
	a. 2015 - Use of Security Services time at £25 plus vat per hour, which on average is 90 minutes is £37.50 for 365 days is £13,687.50 plus vat, which should be invoiced to Burton Waters Moorings and recredited back into the 201 S service charge period.		141
	b. 2016 - Use of Security Services time at £25 plus vat per hour, which on average is 90 minutes is £37.50 for 352 days is £13,687.50 plus vat, which should be invoiced to Burton Waters Moorings and recredited back into the 2016 service charge period.		141
	c. 2017 - Use of Security Services time at £25 plus vat per hour, which on average is 90 minutes is £37.50 for 352 days is £13,687.50 plus vat, which should be invoiced to Burton Waters Moorings and recredited back into the 2017 service charge period.		141
	d. 2018 - Use of Security Services time at £25 plus vat per hour, which on average is 90 minutes is £37.50 for 352 days is £13,687.50 plus vat, which should be invoiced to Burton Waters Moorings and recredited back into the 2018 service charge period.		141
	e. A total of £54,750 plus vat for period 2015 to 2018 should be		141

	recovered from Burton Waters Moorings Ltd.		
5	Security/ Gardening staff costs seem overall very high and do not offer value for monies. There is no experienced horticultural or professional qualified manager or employee within the gardening team leading to poor management of Landscaping and poor monitoring, this is further evidenced throughout the accounts by considerable sums spent on security and landscaping, which hugely benefit the directors Mr Richard Beal and Mr Richard Albert Costall and their respective own companies	Generalisation no specifics. As per point 2 security staff are paid at least the minimum wage; all staff working in security are paid the same hourly rate no matter their age. This is the fair way to pay as they all do the same job and shift patterns. No shift allowances are paid for night shifts solely a flat hourly rate. Security Duty Managers have been appointed in 2018 to aide the other security officers in giving more consistent training and provides someone that the security officers can report to on site. In regard to the grounds maintenance staff, there has always been a head grounds person which is paid a higher rate of pay due to their experience in operating relevant machinery and for taking charge of the vast landscaping around site. We receive no other complaints from anyone on site regarding the grounds' maintenance. We have employed apprentices who have gone on to achieve horticultural qualifications and staff who are qualified in spraying etc as this then provides better value to the service charge than using outside contractors. We have purposely not given staff training in some areas because on investigation the additional cost of insurance and equipment has made it unviable.	302
6	In essence there are no charges made to Beals Developments or Burton Waters Moorings for security costs, despite numerous hours spent dealing with these companies issues on a day to day basis, at considerable service charge expense. An appropriate charge for such services should be reviewed by the Tribunal and thus	BW Moorings pay service charge the same as all leaseholders on site. Their percentage is worked out by an independent surveyor and takes into account their use of the services on site. Beal Developments also pay annual service charge for undeveloped parts of the site.	141

	reimbursed into the service charge costs for the periods in question.		
7	Page 3 re Lincoln security Invoice 114533 -it is asked why no recovery was made of this cost against the vehicle and owner that caused the damage, as such would be covered on their insurance and the vehicle details would have been recorded on CCTV. The applicant will not pay £284.04, which should be a recoverable cost.	Where a vehicle damages the barrier, we check CCTV and if the vehicle is registered on site we invoice the person responsible. If they do not live on site and is a private car we cannot invoice them. If the cost of the repair is more than the £500 excess on the insurance policy then we pass to our insurers. In this instance we could not do this. In 2017 we fitted an ANPR to the main barrier on Park Lane; this means that we can get the registration number of the vehicle but BWM cannot look up an owner unless the vehicle is registered on site. If they are a visitor to still have no way of recovering unless it is put through the insurance and then we must pay the £500 excess. The time and cost of pursuing payment outweighs the cost of the barrier.	233
8	Page 8; There is an invoice from Burton Waters Management Company at a cost of £7,464.84 to Burton Waters Moorings for a security barrier for the Quays main entrance, this has been paid for by Leaseholders, as demonstrated by the invoice and not Beal Developments Ltd the developer of the Quays, the Quays was then in its site development phase, moreover the site had not yet been handed over. The applicant seeks the costs incurred in this expense to raise this invoice, as no invoice of cost, was attached. When this was originally discovered Banks Long and Co explained this was an invoice paid for by Leaseholders but invoiced to Burton Waters Moorings, but such made no sense, when further explanation sought -none further	This is an invoice from BWM to BW Moorings [229]. The invoices are not entered into our system until they are paid. There is no charge to the Management company or service charge. It is simply that whilst on site at another job Lincoln Security made emergency repairs to The Quays barrier on our instruction. The management company paid the invoice and recharged to BW Moorings who then repaid the management company. We should not have to provide proof of payment as the accounts are checked and audited by an external accountant at each year end. The answer to this was given to Mr Fernie and as part of a previous complaint by him to Property Ombudsman.	145

	<p>provided. No proof of purchase was provided from Burton Waters Moorings, no proof of payment was supplied of the invoice. However, the question was and is still raised, as to why are leaseholders, paying for an installation of a Security Access Control Barrier to the Quays, on a new development of Beal Homes, which should be a development cost, but strangely it seems leaseholders pay for such new build costs and then invoice to Burton Waters Moorings. Why did the Burton Waters Management Company receive such an invoice in the first place? The whole transaction needs searching scrutiny. Disputed £7,464.84 - proof of payment required and a full explanation required of the transaction.</p>		
9	<p>Page 13 shows work carried out to Pontoon 1 Bin Store by Lincoln Security, which Leaseholders have no access to and relates to Burton Waters Moorings - why are Leaseholders paying for such in the first instance, and has the invoice for such works to Burton Waters Moorings {found on page 2}1 actually been paid -proof required? Moreover, why is time being spent by staff {paid for by service charge costs} in dealing with such invoice and again not charged for time spent? Disputed £867.08 -proof of payment required and full explanation required.</p>	<p>This invoice was recharged to BW Moorings; please see [231]. Refer to point 8 regarding recharging.</p>	145
10	<p>Page 16 -shows Invoice for work done to Quays Pedestrian Gate by Lincoln Security - this is for the gate on the new development of the Quays by Beal Developments - it is asked why Leaseholders are paying for such in the first instance - it states such to be paid for by Beals - the invoice for such</p>	<p>This invoice was recharged to Beal Developments; please see [233]. Refer to point 8 regarding recharging. All occupiers of the Quays are benefitting from the security provided by the gate, therefore the management company is responsible for the cost of any repairs. Since the Burton Waters development</p>	145

	is found at page 20 but the applicant needs to confirm such was actually paid and why is staff time spent on such and not invoiced for. Disputed £338 -proof of payment required and full explanation sought.	was first developed, the costs for the maintenance of the access control and security systems benefitting the occupiers on site are paid and charged to the Leaseholders through the Management Company.	
11	Page 17-18; Invoices 117889 and duplicate show £840 paid for work on Pontoons which are owned by Burton Waters Moorings, why are Leaseholders paying for such and why is staff time being spent on dealing with such? Disputed £840 -proof of payment required and full explanation required.	Pages 17 [235] and 18 [234] are the original invoice sent and same invoice reworded. This relates to the Marina Gates which form part of the burton waters site and are part of the Service charge. The current electric cabinet uses an electricity supply located by pontoon 3. This supply ceased and a new cabinet and supply was located in the ladies' toilet block owned by BW Moorings. They make no charge to the management company and therefore the service charge for electricity used by this gate [map ref. 11].	145
12	Page 20 - Invoice to Beal Developments for £338.00. Why is staff time being spent on such and why was the invoice dealt with Burton Waters Management and its agent taking up time and resources? Disputed £338.00 -proof of payment required and full explanation required.	See answer to point 10.	145
13	Page 23 shows an invoice 11930 for work carried out on the Quays by Lincoln Security paid for by the Leaseholders service charge - no invoice to Beals found £81.90 as site was still in development and under their control and not handed over. Disputed £81.90 -proof of payment required and full explanation sought.	All occupiers of the Quays are benefitting from the security provided by the gate, therefore the management company are responsible for the cost of any repairs. Since the Burton Waters development was first developed, the costs for the maintenance of the access control and security systems benefitting the occupiers on site are paid and charged to the Leaseholders through the Management Company [236].	199

14	Page 25 shows an invoice from Lincoln Security for an emergency call out to put in place codes and re-sets for power outages, which should have already been in place, negligent management of site and unnecessary cost. £306. Will not pay, demonstrates bad management in not ensuring reset codes were available. £306.	Due to staff holidays and a change in staff the codes could not be found. The system was returned to running order and a new system put in place. Unfortunately, sometimes errors will occur.	303
15	Page 29/30 shows an invoice for work done to a Bin Store -what is this cost for? Disputed £405.57 and £345.57.	Page 29 [238] is the invoice for the quote at page 30 [239]. The bin store is located at [map ref. 15]. There was a wireless connection for the access control/lock system but the wireless link was only working intermittently due to interference from other frequencies of wireless objects. It was deemed prudent to replace with a wired connection to sort out the problem and provide a uninterrupted service.	204
16	Page 39 Invoice 124847 shows work done to a Marina Gate - why is this a Leaseholder cost? Disputed £195.	The marina gate is part of the service charge and it required a new access control reader.	187
17	Page 42 Invoice 125221; shows work done to a Marina Gate - why is this a Leaseholder cost? Disputed £318	See point 16 [241] [map ref. 11]	187
18	Page 44 shows a quotation sent to Burton Waters Management company for a cost for the Marina Gate {page 2 missing}-why? Was this work done?	Page [242] is other page of the quotation which was put through as an accrual on the 2015 service charge accounts. This work was completed in June 2016 and put through these accounts on page 27 & 28. See item 74 below for another query on same item.	169

19	<p>Pages 45-65 shows costs incurred of £11,500 paid for constant repair work and updating of the CCTV System - this cost seems excessive and due to poor management and repair and maintenance plans - no other quotes were sought from other companies. The same contractor seems to be repairing the same items. In that costs seem to be constantly repairing faults on work already done by the same firm -why? This is poorly monitored and seems not checked. Why? £11,500 disputed.</p>	<p>Page 45 is 2 new larger monitors(screens) due to increased CCTV cameras to monitor; the monies for this was accrued for in the 2014 service charge year which Mr Fernie did not pay towards. Page 46 is a trying to find the problems with the CCTV cameras losing connection. Page 47 is the cost of replacing the antenna to solve the problem which kept reoccurring from Page 46 item. Page 48 is the annual CCTV maintenance contract which covers routine visit to check and clean each camera onsite. Page 49 is the replacement of camera 5; the CCTV cameras are replaced on a rotation so that coverage is maintained. Page 50 is a worksheet. Page 51 Electrical connection issue in CCTV pole Electrician needed. Page 52 is a worksheet. Page 53 Electrician for page 51 issue. Page 54 Labour charge for loose Fuse. Page 55 Replacement power supply to camera 14. Page 56 Groundworks for new CCTV pole. Page 57 Resetting of encoder and decoder that ceased working following power cut. Page 58 worksheet. Page 59 Worksheet. Page 60 Replace Broken camera. Page 61 - 65 Quotations for work that is being accrued for in 2015 but will be spent in 2016. We have a process of walking the site and making sure all areas are covered by CCTV as more properties are built or trees grow etc. We look at issues this raises and build them into the next years budget or accrue for in the year if monies are available. Previous companies have been used to supply CCTV and access control services therefore we are aware of the costs of other companies. If another company supplies a CCTV camera then they would be responsible for connecting it to our system and providing cover going forward. This</p>	151
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		<p>has proven in the past to be less cost effective as often systems do not connect to each other simply and more work is involved.</p>	
<p>20</p>	<p>Pages 80-95 - are invoices for a contract hire car for security to use. The applicant asked for others quotes sought at the time of purchase, as the cost was high in comparison to other identical vehicles by £132 per month - no explanation provided. Car seat covers were invoiced twice in a period of 4 months -why? Car is too expensive for use and compared to other quotes at time the applicant has been able to procure at that time. Please provide other quotes obtained at the time for such a major financial commitment to the service charge funds. All Rental invoices disputed, and reduction of cost sought by 30% and reimbursed into service charge of some £840 plus vat.</p>	<p>Burton Waters were turned down for a lease car from 4 leasing companies due to its accounts making no profit at a year end therefore no credit history. This has limited our lease company to Arval who we have a relationship with and a credit history. This lease was taken out in July 2014, before Mr Fernie was a leaseholder, and was based on 15000 miles per annum. Mr Fernies quotes were at a later date and, in our opinion, could only be based on low miles per annum and on personal contract hire. He has never provided the quotes he obtained. Car seat covers were bought in January 2015 at a cost of £8.34 and were purchased again in April 2015 at the same cost. The car is in use 24 hours a day with staff being in and out of it many times a shift; therefore they wear and split. R1 has been unable to lease vehicles due to it being a not-for-profit company [244], except from Aviva, with whom R1 already enjoys a commercial relationship. R1 is unable to comment on the quotes obtained by the applicant without sight of them. The car seat</p>	<p>237</p>

		covers cost £8.34 and needed replacing.	
21	Page 91 - The applicant asked Banks Long to qualify whom they sought car insurance quotes from - none supplied. Savings could have been made at the time of £224. Disputed 763.38.	Bluefin are the insurance brokers used by Burton Waters Management Limited. The brokers obtained quotations from the market and advised as to the best value and best offer for Burton Waters Management Limited [245].	244
22	Page 154-156 - £615 paid for a fitness policy for security - why? Security have been advised they must not engage or chase anyone involved with criminal activity. Why were solicitors employed to provide a draft policy for fitness tests? Disputed £615.	As we told Mr Fernie previously, and again during his complaint to the Property Ombudsman, the management agents are not employment solicitors hence why they did not formulate the policy; they worked with the solicitors and health and safety advisers to draw up following advice from the management company's health and safety advisers. The policy needed to be reconciled against discrimination law and employment law and H&S issues; the management company does not undertake such specialist work itself. There is no legal obligation for the management company to have a fitness policy, but they do have a duty of care to employees to make sure that they have a reasonable level of fitness to complete their job. It is a term of their employment that they must pass a fitness test.	152
23	Pages 157/160/163/164/167/170/173/178/179/186/190//194 - why have leaseholders paid through the service charge £2,880 for Health and safety service retainer? What was it for, what other quotes were sought? Disputed £2,880.	Arion were employed by the Management Company to provide H&S advice to the company. They were paid a retainer, to provide advice, produce audits/ policies and to carry out regular visits to the site. Within this fee, they carried out the fitness testing.	248

24	Pages180/187 - whom are Mohawk Security Ltd - why do you use them - have they been suitably checked - are they the value for monies-what other quotes obtained? Disputed £132.	Mohawk Security provide mobile security patrols when the staff rota is unable to place 2 security officers on a night shift due to holidays and sickness. The cost of employing Mohawk to carry out the mobile patrols is significantly cheaper than employing a further security officer to work the shift.	153
25	Why are leaseholders paying for GP Report? Disputed £94.30	A staff member had an operation in 2015 and before he resumed work with us. We asked for a medical report to make sure that he was fit to return to work in a security officer's role. We have to pay for this medical report.	250
26	Pages 195 - West Lindsey Council Rates for £2,880 - please advise the areas the Rates covers? Please confirm this rateable bill does not include areas owned by any other third party. Disputed £2,880	The rates bill is for the office, as detailed on the bill. This is for the store used by the ground staff to store all equipment used by them [map ref. 26].	253
27	Pages 197 - Invoice from Bunzl for £70.48; why are the management company purchasing expensive toilet paper and hand towel {cushelle} and who is it for? Please confirm how this was monitored and whether any supplies were used by Burton Waters Moorings Ltd? Disputed £70.48.	These items are for use by staff and visitors to the security office only. The security staff monitor the levels as they do the cleaning and replenishment and inform BLC when more need ordering.	304
28	Pages 196-217 It is noted £2,842.43 was spent on fuel, coffee, tea and sugar from the most expensive locations - deli's and Co-op - why was no attempt made to reduce costs, by good and diligent management by buying wholesale and from the nearest supermarket of Morrisons or Tesco rather than the Quayside Deli and Co-Op the most expensive- this shows lack of due diligence and monitoring within Management - savings of 20% could have been made of this cost in relation to using wholesalers and other fuel suppliers; saving £567. 56. Please confirm how this was monitored and whether any supplies were used by	As we told Mr Fernie previously, and again during his complaint to the Property Ombudsman, the co-op petrol station on Carholme Road is used because it is the closest to Burton Waters. This means that the member of staff who has to go and buy fuel is away from Burton Waters for the shortest amount of time. Buying from a supermarket petrol station would mean that they would have to be away for a longer time and more petty cash would need to be kept on site. This is not viable as it is more difficult to draw cash from a client bank account. The dividend points are used to buy tea, coffee or sugar as they were on	257

	Burton Waters Moorings Ltd? Disputed £2,872.43.	receipts. To support the local businesses on site, it was agreed that milk would be purchased from the deli. The staff on site are best placed to order the milk. Provisions began being bought via the internet in bulk in 2016.	
29	Page 236/237/238/239/240 - Invoices for fire alarm check and other works between Security Office and Marina Office. Did the Marina office share this cost or did the leaseholders bear the full cost? Disputed £1,190.74.	Page 236 [415] was to check the links and it was discovered that there were none. Page 237 [416] is the worksheet. Page 238 [417] is for servicing the fire alarm located in BWM office only. Page 239 [418] servicing of BWM fire extinguishers. Page 240 [419] linking of Fire Alarm Panels as per page 236 As the offices are on top of each other it was a Health & Safety requirement to link them together. Half the cost of this was recovered from BW Marina and paid into our bank March 2016 (see [276] & 2016 accounts)	260
30	Page 241/247 - which office has Air conditioning and how many units within - insofar as I am aware that would only be security office, and such is expensive -normal quotes are 125 for inspection of two units - what quotes were obtained? Disputed £192.	The security office has air conditioning units which provide both cold and hot air so are a heating and cooling system. We have a contract for servicing of these units twice a year. Adcock have carried out the servicing of the units over a number of years. The cost is competitive and the service that they provide has always been an acceptable standard.	259
31	Page 246 & 249- it seems odd Banks Long and Co charge for a first aid course -where is the original suppliers cost - whom are these two individuals - the course as such is expensive - normal quotes are £75 per person In Lincoln for a full day course - what	Banks Long & Co paid on their credit card as BWM could not get credit to pay for the course. All staff were grounds maintenance operatives. Banks Long & Co organised the first aid training on behalf of the Management Company. The price paid	264

	quotes were obtained? Disputed £450.	reflected the course that we required, and fitted in with the staff rota. It may have been possible to find a cheaper course, but if we had to pay overtime to the staff, it would have been considerably more expensive.	
32	Page 251 -Invoice from G Lidgett Builders Ltd for £455.40 this seems expensive please provide quotes obtained at the time. Disputed £455.40.	For jobs this small, alternative quotes are not sought. There were 4 individual jobs on this invoice [277]/ [map ref. 32].	271
33	Page 264 - This invoice from MB Electrical for £102 states a diffuser was replaced on the Zebra Crossing on 18-3-15 - to which Zebra Crossing did it apply - as it is documented the Zebra Crossing lights were not working at all throughout 20 14/ 15/ 16/17. Disputed £102.	We must assume you mean page 254 [276]. This invoice was to "repair lights at the foot of the stairs in the security office and external light above the security office entrance door, To replace the diffuser on the Zebra crossing, carried out on the 18/3/15, to replace one 28 watt 2d lamp and start, one 2pin pl lamp" Therefore was for 3 jobs. The zebra crossing is located at [map ref. 33].	305
34	Page 256 to 259 -Invoice from Burton Waters Moorings to Burton Waters Management Company; it is noted that rent is paid by Burton Waters Management - what is it for - please provide lease or rental agreement - what does it cover in terms of repairing and maintenance? Which specific building and area does it cover? When is the rent reviewed, when was it last reviewed? Is the rent commercially viable and fair? When was such last valued? Disputed £15,360.	There is a lease between Eastman Securities, Burton Waters Moorings Ltd and Burton Waters Management Limited for the use of the security office and for the use of the grounds store. A copy of the lease is attached [279]. The rent was last reviewed on 1st August 2016.	254

35	Pages 260-271 show charges of £500 for an estate manager per month and £6,000 quarterly for Management fees via invoices from Banks Long & Co, when were these last reviewed to ensure value for monies, why is there an extra charge for a "Staff Estate Manager "what role and responsibilities does it entail? Disputed £36,000.	Pages 260 - 271 [430 - 440] are for supply of an Estate Manager, as agreed with the directors of BWM, by BLC in addition to their fee for managing the service charge. Previously an Estate Manager had been employed at a higher cost. When he left in 2010, BLC took on this role too at a lesser cost. This fee pays for managing the on-site staff directly employed by BWM, dealing with leaseholder applications and overseeing the day to day management issues. Struggling to see where you are reaching £36,000. These invoices total £7,200 for the year (incl VAT). The management fee is also included on some of these invoices which you are disputing at point 69.	278
36	Pages 305-316 - Please advise what the Anglian water Bills cover in terms of usage, the applicant has seen no bills to Beals Homes whom accessed main water for the Quays Development or the large water feature constructed within -why? How is water worked out for Burton Waters Moorings? Disputed £1,351.45.	Pages 305-316 [441 - 452] show water bills for the security office and for the several stores. BWM pays the bills for the security office. It also pays the bills for the stores that are not part of common parts and recharges to BW Moorings, as per pages 307, 310, 313 and 316, for the bill less the submeter reading taken from BWM grounds store. As you will see from the amounts, no water supply was made by BWM for The Quays Development.	256
37	Page 353 - Invoice from Banks Long & Co to Burton Waters Management Company; where is the Deep-water sign located? Disputed £11.76.	This was purchased on BLC credit card online and recharge to BWM. It is located in Ellison's Quay [299] [map ref. 37].	188
38	Pages 353 to 390 show invoices from Green Stripe, which when compared to other wholesalers for the same equipment are sometimes 30% more expensive - why? Per example on Page 365 a digging spade is purchased for £39.96; a digging spade can be purchased online for £15 -why is this not checked before purchasing?	We have purchased cheap equipment previously and it is not best value. Green stripe also offers us a credit account which means we are given credit to purchase and as previously said we do not have unlimited access to cash. The grounds staff work with these tools on a daily basis.	173

	a. Diesel purchased from Burton Waters Boat sales - is this red diesel and please confirm other quotes were obtained?	Yes, it is the red diesel used in the tractor. Quotes were not obtained as it makes sense to use a supplier on site, as to leave site would result in additional costs.	173
	b. Gloves purchased from Burton Waters Boat sales are manifestly expensive they charge £7.50 for one box of 8; latex gloves containing 200 can be bought for £9.99 plus vat - why is this not checked - service charge costs through failure to monitor, are we using the most expensive supplier?	It is £7.50 per box of 100 not 8. The invoice says 8 x boxes of latex gloves.	173
	c. All costs disputed as not being monitored and incurring unnecessary expensive - reduction of overall cost of £3813.24 sought of some 25% equating to £953.51 credit back to service charge.	Costs are monitored but it is unrealistic to check every purchase. If they are out purchasing fuel, they may visit a DIY store to purchase small items, which they pay for personally, and are then reimbursed. This is not sustainable. We purchase where we can get credit accounts and these may not always be the cheapest but they are local companies that offer good service to equipment. We have to purchase certain items through specialist companies because they are for Health and Safety such as spraying suits, online they will only accept credit card. Due to Mr Fernie constant complaints about BLC recharging BWM and about transparency, BLC have withdrawn this facility to BWM and BWM have had to get their own credit card to offer best value by purchasing online. This now costs BWM a card fee of £25.20 per month but is the only way to purchase items online or to purchase fuel since a fuel card was refused several times due to credit rating.	173
39	Pages 392 - Invoice from G Lidgett totalling £2,664; where was this work carried out and what other quotes was obtained? Disputed £2,664.	Park Lane, Ellison's Quay and The Moorings. The blocks were loose and required removing and relaying due to H&S risk of trips [300] [map ref. 39].	271

40	Page 393 - Invoice from Banks Long & Co for £171.42 -where is the Deep-Water Sign located and where is the original receipt for the jackets as they again, seem very expensive due to online quotes by 20%? Disputed £171.42.	See point 37. The Hi Vis coats were purchased online and are 7 in 1 so can be used in all weathers. The sign is located at [map ref. 37].	186, 188
41	Page 394 - Invoice from G Lidgett for £3,816 for painting a Marina Bridge - which one? Why are you using a ground works firm to paint a bridge - please provide other quotes obtained . Whom does the Bridge belong to, as it is described as a Marina Bridge? Disputed £3,816.	As we told Mr Fernie previously, and again during his complaint to the Property Ombudsman, we asked several companies to quote for painting the bridge but they would not quote because it involved hanging from ropes over water. Our builder had a painter who he subcontracts to who would undertake the work. The cost reflects the dangerousness and difficulty of the work. The footbridge over the Marina entrance forms part of the Burton Waters development and is the responsibility of BWM to maintain. [301] [map ref. 41].	272
42	Page 395 - Invoice from Ace Construction for £240 - why are we using a contractor to clean out composting bins - when there is already Landscaping staff on the payroll to do such work and have the equipment to do so- how was the compost used which residents leave to be composted? Disputed £240.	Ace Construction removes the items with a mechanical digger. Unfortunately, residents keep putting items that are not compostable within the bins which means it cannot be used on site as it is contaminated.	174
43	Page 396 - Invoice 1457 from C S Crafts - where was the fence repair? Disputed £240.	The fence is located at [map ref. 43] [302].	189
44	Page 397 - Invoice from Banks Long & Co - for £235.79 - where is the suppliers invoice as this is expensive by some 28%? Disputed £235.79.	Paid for on BLC credit card and recharged to BWM [303 & 304]. As we told Mr Fernie previously, and again during his complaint to the Property Ombudsman, £196.49 + VAT was paid because it included the pole and fixings which the cheaper ones do not. It is also green in colour which are generally more expensive than the red	205

		ones.	
45	Pages 398 to 405 - Repairs to Lighting - is this the most cost-effective way for Leaseholders -the repair bill is £5,893.20 simply for replacing light bulbs and includes work on the marina pontoons - what other quotes were obtained and where is the invoice to Burton Waters Marina for works carried out on the Pontoon and to Beal Developments for works carried out on the Quays? Disputed £5,893.20.	There is no cheap way of replacing street light bulbs. Due to health and safety, the electrician is unable to go up a ladder and replace bulbs. We must now hire a cherry picker and we replace when we have enough broken on site to warrant the cost of hiring. We have looked to purchase a cherry picker, but we must then make sure our insurance covers it which is a high cost and that all people who use have proper training. This again makes it too difficult and expensive. Page 402 [501] is a sheet that security mark defects they note around site on. Anything for pontoon is passed to The Marina to deal with; these items are not included on MB Electrical invoices.	175
46	Page 406 & 417 /149- Invoice by Allerton for £208.80, £102, £180; Whom owns the Service Storm water pump and where is it located? It seems the invoice is for Beal Developments Ltd? Disputed £490.80.	The storm water pumps serve the whole of Burton Waters Development, the invoice refers to them as the Beal Developments as this is the original installation address. The cost of the maintenance is to be paid for by Burton Waters Management company as if these pumps were not maintained then there is a risk of flooding to the whole of the Burton Waters development [305] [map ref. 46]	190
47	Page 408 - Invoice for £400 from Upper Witham Drainage Board. What is the Parkers Drain and where is it located? Disputed £400.	The drain is located at [map ref. 47] and protects the whole site from flooding. Upper Witham drainage board are responsible for keeping the Parkers drain extension clear. If these works were not under taken there is a risk of flooding to Burton Waters and the surrounding areas. This is an annual contract with Upper Witham Drainage board and is carried out by them so to ensure the flood defences of	190

		Lincoln are maintained.	
48	Page 410-this is an invoice for £13,824 for a Kubota Tractor- on enquiring at the time this was some £1,700 more expensive than other prices obtained - please provide quotes obtained at the time. Only willing to pay the cost less £1,700.	As we told Mr Fernie previously, and again during his complaint to the Property Ombudsman, you are not taking into account invoice 412 [310] which is a credit note for the px of the previous tractor of £8400. This price also includes a new cutter deck at a cost of £2484 (£2070 + VAT) therefore a cost of £2450 to change the tractor was acceptable. We did not obtain additional quotes because we have other equipment that fits this make of tractor and would mean changing that equipment too.	177
49	Pages 413 and 414 are invoices for bike shelters; on enquiring at the time this was some £1,100 more expensive than other prices obtained - please provide quotes obtained at the time. Only willing to pay the cost less £1,100.	Due to the grant from Lincolnshire CC, there was no cost to the Management Company [311 - 313].	206
50	Pages 415 -Invoice for Rear Roller petrol mower from Green Stripe-please provide quotes obtained at the time. Disputed £1,435.98.	We received quotes from Green Stripe Garden Machinery and John Kaberry. Green Stripe was the cheaper of the local companies that would invoice Burton Waters Management [314].	173
51	Pages 416-418 works invoiced from G Lidgett for £697.44 and £1,050- please provide quotes obtained at the time. Disputed £1,747.14.	These were costs in connection with point 49. Due to the grant, there was no cost to the Management Company.	276
52	Pages 437 - Invoice for Commercial Insurance at £7,770.82- please provide quotes obtained at the time - quote seems compared to others obtained 22% more expensive. Disputed £7,770.82.	Bluefin are the insurance brokers used by BWM. The brokers obtained quotations from the market and advised as to the best value and best offer for BWM. The insurance is for the equipment owned by the Management Company including the CCTV/Access Control equipment and PL insurance for the common parts of	244

		the site.	
53	Pages 438/439 - Invoice from Burton Waters Moorings to the management company for proportion of insuring marina building, which part of the property mentioned in the Insurance is relevant to Burton Waters Management. Disputed.	Under the terms of the lease between Burton Waters Moorings Ltd and Burton Waters Management Ltd, the Mooring Company is responsible for insuring the building and they then recharge the proportion of the security office and landscape store.	255
54	Page 444 & 446-Invoice from B & B Tree Specialist for £540 for work carried out as per quote for "Burton Waters Moorings" and invoice to Burton Waters Moorings-what work was done and where specifically? Please provide proof of payment and why staff time spent dealing with such: Disputed £540.	As you state, 444 is the invoice from B&B and 446 is the monies received once invoiced to BW Moorings. No charge to BWM [317].	145
55	Pages 447 to 452 - These are invoices for skip hire - can you please advise what they are used for and where located, as the cost is £1,200 per year - - please provide other quotes obtained at the time and where skips were used. Please confirm not used for Burton Waters Moorings waste. Disputed £1,200.	The skips are used by Burton Waters Landscaping Staff for the removal of the waste that cannot be composted. Originally sited behind Marine Studios, the skip is now located within the Marina [320 - 328] [map ref. 55].	207
56	Pages 453 -454-455-459-461-462-464-467-493-508-535-543- 590-628-644 are to Burton Waters Moorings, Pages 565-580- 617-636 are to Beal Developments Ltd and other invoices for Burton Waters Marina Ltd, for various works carried out, in relation to invoices for landscaping and cleaning toilets, which are, of serious concern, in that the following areas seem to exist; of poor accounting, manifestly undercharging and lack of correct hours spent.	To bring an income into the service charge accounts, the landscaping staff maintain the landscaped areas for Burton Waters Moorings, Beal Developments, and various leaseholders. They also carry out the cleaning of the toilet blocks. In doing so, it reduces the service charge by bringing an income into the fund, which provides a cost saving to all leaseholders. By providing this service it also ensures that leaseholders/residents comply with the landscaping clause within the lease. BW Moorings, Marina and Beal developments are charged an hourly	146

		rate for work done. This hourly rate was worked out based on an average of the 4 staff members hourly rate because any one of the four could be completing the work on a given day.	
	a. The labour rate charged for Burton Waters Moorings, Burton Waters Marina and Beal Homes is £9.32 plus 0.85p per hour "Employment costs {which are not defined} the costs do not include materials used, petrol for the lawnmowers, weed killer, wear and tear or any other cost. The charge per hour is £10.17.	Materials for cleaning are provided by BW Moorings. The work on the marina is weeding so requires basic tools only. The work to Beal Developments uses mower plus basic hand tools.	146
	b. Reviewing the invoices to Arbor Living in the 2017 accounts, they paid for the same services provided to the companies above but at a rate of £26.25 per hour; a 158.11% difference.	Arbor Living are charged a flat rate for the contract agreed.	146
	c. Residents whom have their grass cut have small gardens and they are cut in 15 minutes, but residents and leaseholders are charged £ 10 for-15-20 minutes work.	All Leaseholders are charged the same amount. If differing amounts were charged, it would increase the administration costs involved, and would make it cost prohibitive therefore reducing the income to the service charge which is credited against the staffing costs.	146
	d. The national employed contract rate in 2015 as per the Association of National Landscapers contractors rate was £15.50 per hour. This excludes use of any equipment/petrol, pesticides or any other materials used in the course of the work, like gloves, bags.	The landscaping staff are paid a salary.	146

	<p>e. A normal contractors rate including use of equipment and charging for materials is £35/40 per hour.</p>	<p>We are not providing this service to make a substantial profit. If we were to charge a rate at that proposed by Mr Fernie, it is likely that the leaseholder would employ an external contractor, which would remove all income from the fund. Resulting in an increase in costs to all leaseholders.</p>	<p>146</p>
	<p>f. Clearly Burton Waters Management has been manifestly undercharging Beal Homes/Developments {Mr Richard Beal and Mr Rik Costall} and Burton Waters Moorings Ltd {Mr Rik Costall} to benefit those directors and their respective companies, - if they had been charged even at the rate charged to Arbour Living -the income received from Beal Homes/Developments would have been substantial and fair in relation to other companies.</p>	<p>Refer to point 56</p>	<p>146</p>
	<p>g. Burton Waters Marina has also been manifestly undercharged.</p>	<p>Refer to point 56.</p>	<p>146</p>
	<p>h. Notwithstanding the above, it is clear and evident that the rates charged to Beal Homes/Burton Waters Moorings and Burton Waters Marina, do not cover the costs of materials, in essence will not cover overall staff costs per hour and are operating at a loss to benefit these companies.</p>	<p>Refer to point 56.</p>	<p>146</p>
	<p>i. Burton Waters Moorings Ltd were invoiced for 527 hrs at £10.17 per hour a total of some £5,359.59 -it should have been charged at £25 per hour which would have produced an income of £13,175 a shortfall of some £7,815.41 plus vat. £7,8415.41 plus vat should be credited to reduce the service bill for 2015.</p>	<p>Refer to point 56.</p>	<p>146</p>

	<p>j. Beal Homes were invoiced approximately 95 hrs {this is less than work seen and monitored by gardening staff attending to the common parts in the Quays} at £10.17 per hour a total of some £966.15 -it should have been charged at £25 per hour, which would have produced an income of £2,375; a short fall of some £1,408.85 plus vat. £1,408.85 plus vat should be credited to reduce the service bill for 2015.</p>	<p>Refer to point 56</p>	<p>146</p>
	<p>k. Burton Waters Marina were invoiced approximately 87 hrs at £10.17 per hour a total of some £884.79 -it should have been charged at £25 per hour, which would have produced an income of £2,175; a short fall of some £1,290.21 plus vat. £1,290.21 plus vat should be credited to reduce the service bill for 2015.</p>	<p>Refer to point 56.</p>	<p>146</p>
	<p>l. There is also a concern that through bad management 709 hrs has been spent working for these third parties, subsidised by the leaseholder with no advantage to leaseholders and more likely a loss to service charge costs, and other areas of the development are being neglected or delayed, facilitating work for these companies. Gardening staff have complained to the applicant in conversation, they are short staffed and often behind with work.</p>	<p>We employ 3 full time and 1 part time grounds maintenance staff. The works carried out for Leaseholders does not affect the service that is provided to the whole of Burton Waters, and in fact we get many compliments as to the level of service that is provided by the team.</p>	<p>146</p>
	<p>m. There is no charges for wear and tear of equipment or any material used; such as petrol, and other garden equipment and ancillary items to Beal Homes/Developments, Burton Waters Moorings and Burton Waters Marina. It is evident service charge funds are funding these ancillary costs for third parties, as aforementioned at a considerable loss.</p>	<p>Refer to point 56.</p>	<p>146</p>

	n. The solicitor Mr Holt acting for the respondents has affirmed there are no contracts that exist in his letter of 10-9-18, for the provision of the landscaping services by Burton Waters Management, which demonstrate clear poor management and commercial awareness, by the Respondents.	Any party instructing the landscaping staff agree to the charges and are charged monthly in arrears. They sign a sheet to agree to our payment terms and to confirm which type of cut they would like i.e. single lawn, double lawn, holiday cut only.	146
	o. There are no charges for work done by security or provision of CCTV services for these companies.	Mr Fernie seems to not understand how a service charge or apportionment works. All leaseholders have been charged for all aspects of running the site through their service charge apportionment which he has been issued with.	146
	p. It is clearly evident that leaseholders are subsidising through the service charge considerable third-party works done, which is being carried out for the sole benefit of the respondents separate companies, at a considerable cost and detriment. Other parties also benefit from the poor management, which will always exist due to the conflicts of interest that will arise through the directors of the management company and other third-party companies acting for the self interest and financial benefit. The matter deserves searching scrutiny by the court, of what is actually happening within the management of the Management company and its actions in this regard.	Third party works are charged separately and were worked out based on an average rate of pay. We gain more if an apprentice is doing the work and gain less if the team leader is doing. They could employ someone themselves at minimum wage to do the work and we would lose this additional income stream and would in turn increase the amount payable by each individual leaseholder. As referred to at 6, the service charge apportionments are reviewed annually, and take into account the services that are provided by the Management Company.	146
57	Page 652 - Invoice from G Lidgett for £750 for repair of a signboard - which one and what quotes were obtained? Disputed £750.	This is the noticeboard located on 'The Landings' [328] [map ref. 57].	271
58	Page 654- Invoice from Allen signs for repair of damaged signs for £1,035. What other quotes were obtained, and which actual signs were involved? Disputed £1,035.	These are the signs located at the site entrance which more than half the metal was taken by thieves [329] [map ref. 58]. We do not know when this happened but was between bi-monthly	208

		site inspections.	
59	Pages 691 Invoice from Banks Long & Co - why are the Leaseholders paying for extra Independent Management advice -should this not be contained within the existing charges charged by Banks Long & Co - what is the advice specifically for and whose actual advice was provided within Banks Long & Co. Disputed £240.	This is the charge made by the independent consultant surveyor for calculating the annual apportionments and recharged by Banks Long & Co.	281
60	Page 694 - Please explain the invoice from Beal Homes to Burton Waters Management for £210. Disputed £210.	These are the legal fees in regard to access rights to the pumping station [330].	293
61	Page 696 - Invoice for £594 from Frameworks. Please explain what this invoice refers to? Disputed £594.00.	Preparation of plans for BWM by adding street lighting and CCTV positions and then providing an up to date handover plan.	306
62	Page 697 -Invoice from Banks Long and co for debt chasing letters for £1,980.00. Please explain why Leaseholders pay extra for normal management duties? Disputed £1,980.	Historically Wilkin Chapman LLP were instructed for debt collection. They charged £50 per letter and the success rate in obtaining payment was limited. Banks Long & Co charge £15 per letter and have recovered all but Mr Fernie's debts.	278
63	Page 698 - Invoice from Joanne Costall for £125, what is it exactly for and why is it paid to the wife/relative of the Director Mr Rik Costall? What other quotes were obtained for the work? Disputed £125.00.	It is for professional advice in regard to lease breaches. Previously this was charged to us at £250 per hour as per invoice 699. This showed a decrease in cost of 50%. It is irrelevant that she is the daughter of one of the directors. Joanne Costall Consultancy Limited provides non-reserved legal advice and assistance. The majority of work in relation to R1 is carried out by James Hazel.  Mrs Costall qualified as a solicitor and was an equity partner until she retired from High Street practice to establish Joanne Costall Consultancy Limited. Her specialism is property law. She	292

		<p>was previously head of commercial and residential property at a regional firm. She has over twenty years' experience. James Hazel qualified as a solicitor in 2008 and specialises in corporate, commercial and employment law. He was previously an equity partner in a regional law firm and has been head of litigation, employment and corporate departments. The charge out rate for work in respect of R1 is £125 + VAT, far below the rate of an equivalent fee earner in a traditional firm. The saving for leaseholders in respect of legal work generally is around 50%.</p>	
64	<p>Page 699 - Please explain this cost by Chatterton's for what in essence seems to be work already paid for to Joanne Costall in page 698 above? Disputed £300.</p>	<p>This is not the same work as invoice 698. Refer to the detail on the invoice.</p>	245
65	<p>Page 700 - Invoice from Joanne Costall for £250 for professional advice, please affirm her qualifications and why she was chosen to give advice and what is it exactly for and why is it paid to the wife/relative of the Director Mr Rick Costall? What other quotes were obtained for the work? Disputed £250.</p>	<p>To provide legal advice on a lease breach as the invoice states at half the cost of other solicitors.</p>	292
66	<p>Page 702 &amp; 709 - Chatterton's Invoice for £2,918.68 and £1,698.48; was this prosecuted as a successful breach on this Page and Page 709 -it suggests some £4,600 was spent on legal fees -without recovery? Disputed.</p>	<p>As we told Mr Fernie previously, and again during his complaint to the Property Ombudsman, there was a lease breach by a resident which took place in May 2015. Following numerous letters, we obtained legal advice which then resulted in solicitors being instructed. Proceedings were issued in the Lincoln County Court. The leaseholder initially sought to defend those proceedings but then accepted that the lease breach must be remedied. The leaseholder complied with the Management Company's</p>	298

		subsequent instructions and the matter was successfully resolved.	
67	Page 706 - It is noted £35 was paid for a registration of a data controller but no written privacy statement existed at the time, as affirmed in correspondence from Wendy Lester of Banks Long & Co, in a communication dated 07-08-18, in which she confirmed; there was no written privacy policy statement in place before June 2018 - upon which the court should be aware the Information Commissioners Office is now investigating such breach. Disputed £35.	BWM have been registered with the ICO as far as the current accounts go back which is, electronically, 2008. This fee is £35.	209
68	Page 708 - Invoice from Joanne Costall for £187.50. Please explain what is it exactly for and why is it paid to the wife/relative of the Director Mr Rick Costall? What other quotes were obtained for the work? Moreover, why as the relative of Mr Costall been instructed to address an issue re Parking and access to Burton Waters Moorings a company he is a director of, there is a clear conflict of interest. Disputed £187.50.	Providing legal advice on BWM parking issues and drafting a parking undertaking to stop those who fail to adhere to the rules. The parking undertaking is within the leaseholders' handbook.	292
69	Pages 713 to 715 - Invoices from Banks Long & Co for 2015 period management fees. When were these fully reviewed? Disputed.	The Management Fees are for the day to day running of the site to include the preparation and issue of the service charge budgets, invoices and end of year accounts, collects service charge payments, arranges and manages the provision of services having due regard to the budget and obligations of the Management Company. BLC fees are reviewed annually as part of the BWM budgeting process and no increase has	278

		been made since 2008.	
	<b>2016</b>		
70	Page 1-2- Invoices from Banks Long & Co for £264.00 and £180. Why are leaseholders paying SIA Licences for security staff within the service charge {see notes at point 2 herein}- Mr Paul Turner, Asley Goddard for whom the licences were paid, how long did they stay in employment with the company? Will not pay £444.	Under the terms of the employment contract, Burton Waters Management pay for the SIA licences for the security staff. If the security staff leave, then they are to reimburse a portion of the license fee depending on the time worked after renewal. The SIA course for Ashley Godard is due to the fact that despite advertising for a full-time security guard with the required SIA license, it was not possible to find a suitable candidate, therefore the management company paid the costs of training.	138
71	Page 6 - Invoice for £7 28.36 from Lincoln Security; why is repair work being done to the Quays, at this time, which had not been handed over by Beal Developments and why are Burton Waters Management staff and its agent dealing with -why is such not being dealt and paid for by Beals? Will not pay £728.36.	The main gates into the Quays have been damaged as detailed on the invoice. All occupiers of the Quays are benefitting from the security provided by the gate, therefore the management company are responsible for the cost of any repairs. Since the Burton Waters development was first developed, the costs for the maintenance of the access control and security systems benefitting the occupiers on site are charged to the Management Company. Rails were put in as part of the repairs to try and avoid this happening in the future.	200

72	Page 21 - Invoice from Fearn Plant for £11,760 - please provide the alternative quotes to affirm this was the best price - I have had other contractors give prices some £3,000 cheaper? Disputed £11,760.	This is for the ducting (CCTV) at the Marina Gate [576] [map ref. 72/73]. Due to new laws the electronics needed to be changed and the only way for them to work effectively required moving the cabling to the other side of the road. This is for cutting ducting through the road surfaces. £4000 was charged to access control for this. The remaining £5800 was for moving the fibre optic cabling for CCTV on Park Lane outside Ellison's Quay and Marine Walk to the other side of the road so to add an additional CCTV camera. This was charged to CCTV and the invoice put into both sections as is good accounting practice.	154
73	Page 24- Invoice for £81.00 by Lincoln Security- again work done on Quays, on a site not officially handed over - why are service charge funds paying for such and staff of the management agent dealing with - where is the invoice to Beals for such? Will not pay £81.	This was a vehicle colliding with the gates therefore not covered by any guarantees or warranties.	200
74	Page 28 - It is noted there is another Invoice by Lincoln Security {page 2 missing} for work done to the Marina Gate to the value of £2,714.99 on {page 1}- is this an actual Leaseholders service charge cost? Disputed £2,714.99.	See point 18 above - Marina Gates.	169
75	Page 37 - Invoice 137747 by Lincoln security for £1,440 - does this invoice relate to any work done on the Quays - what other quotes were obtained? Disputed £1,440.	The Lincoln Security invoice is for the maintenance of all access control and CCTV systems serving the whole of Burton Waters Development.	155
76	Pages 41-42-43- Why is Banks Long dealing with issues re the Marina and accident damage - the costs associated with this and the fees paid to Banks Long & Co in Management charges, should not be used to deal with this or there should be a charge to Burton Waters	A vehicle damaged the Marina gates which are maintained and monitored by the management company [577] [map ref. 72]. The Marina pay a service charge which reflects the above, therefore if any damage is caused to any of the access control equipment including gates, it will be dealt with by	187

	Moorings or the Marina for such work undertaken -please explain? Disputed.	Burton Waters Management company.	
77	Pages 65 - Invoice 131762 - a costs of £2,892 to relocate a camera - please provide other quotes obtained at the time. Disputed £2,892.00.	Mr Fernie refers to page 65 however, invoice 131762 is actually page 53. The cost of £2892 details the cost in regard to the relocation of the Ellison Quays camera. Alternative quotes were not obtained as Lincoln Security provided the maintenance to Burton Waters Management Company. From past experience, asking an alternative contractor to quote is not possible as the equipment used by alternative companies does not always correspond with the equipment we have on site and any small cost saving is out weighted by the additional costs in configuring such equipment. Monies accrued in 2015 therefore no charge to service charge in 2016. The applicant is disputing items twice.	156
78	Page 55 -Invoice 131760 for installation of Camera at a cost on page 1 {page 2 missing} of £3,480.00 - where was such installed and where is page 2? - please provide other quotes obtained at the time. Disputed £3,480.00.	Page 2 is solely the VAT breakdown [580]. As you can see, the supply and installation of a camera at a cost of £2900 + VAT equates to £3480. As referred to in point 77 an alternative quote was not obtained. Monies accrued in 2015 therefore no charge in 2016.	157
79	Page 56 - Why is there a duplicated invoice as per page 21 as above?	See Point 72.	307
80	Page 57 - An invoice from Banks Long & Co - for a Monitor - where was this provided and where is the original suppliers invoice and why not attached to such? Disputed £303.01.	A monitor was required for the security office due to the failure of one of the monitors. The monitor was purchased by Banks Long and Co on a credit card and the costs of such was recharged.	265
81	Pages 59-60 - Why are these invoices totalling £816.28 from Lincoln Security in June and April for the same amount for seemingly the same equipment invoiced twice?	In April 2016 the Joystick for controlling the CCTV cameras failed, a replacement was installed. The second joystick was due to the first replacement being broken when a	158

	Disputed £816.28.	member of staff fainted. At the same time of installing the second joystick, they installed the monitor that had been purchased separately.	
82	Pages 64-69 Is a quote for proposal of works to be carried out re CCTV Cameras from the supplier Lincoln Security, whom after reviewing all invoices often attend to repair fittings, they had previously repaired and such seems unchecked, for work to a high value- please provide the other quotes you should have obtained? Disputed.	These are accruals.	308
83	Pages 93-94-95-96-97-98-101-102 - are invoices for a rental car for security to use. The applicant asked for the quote sought at the time, as the cost was high in comparison to other identical vehicles by £132 per month - no explanation provided? Car too expensive for use and compared to other quotes at time. All Rental invoices disputed, and reduction of cost sought by 30% and reimbursed into service charge of some £840 plus vat.	See point 20.	237
84	Page 103 - Car Insurance Invoice from Blue Fin - please provide other quotes obtained at the time. Disputed £817.60.	Bluefin are the insurance brokers used by Burton Waters Management Limited. The brokers obtained quotations from the market and advised as to the best value and best offer for Burton Waters Management Limited. There are 12 members of staff who require use of the vehicle and this needs to be taken into account when comparing quotations.	309
85	Pages 163-166-170-175-176-180-185-190-194-198-202-203- paid to Arion again for fitness services £2,880 - that is manifestly excessive and an unnecessary cost - please fully justify this cost and what other quotes were obtained? Disputed £2,880.	The invoices for Arion were for a monthly Health & Safety retainer at a cost of £200 per month. This was not for a fitness service. The retainer included the cost of providing all Health & Safety documentation including a Health & Safety Audit, Fire	248

		Risk Assessment and producing staff documentation and carrying out the fitness testing of the security staff employed by Burton Waters Management Limited.	
86	Page 164-165 - Invoice from Andrew Jay at £300. What does this Solicitors cost refer to of £300? Disputed £300 .	These were for solicitors' fees for employment settlement agreements.	299
87	Page 162-179-186-187-193-195-201 Re Mohawk Security -why have leaseholders through the service charge paid the sum of £3,396.90 extra for security in light of the already high costs of staff wages? Disputed £3,396.90.	See point 24.	153
	<b>2016 Accounts:</b>		
88	Pages 208- The cost of some £250 spent on milk at a local deli is simply extravagant and wasteful use of leaseholders service charge funds and extremely poor management of costs- if milk and tea bags had been ordered from wholesalers a saving could have been made of £1 38 - why was this not managed properly? Disputed £250.	It was agreed we would support a local business by purchasing milk from them. Following a change of ownership, this became impossible as they would only accept cash payment therefore we decided to buy milk at the same time as fuel from Co-op to save journeys and money and they could be bought on account to aid cash flow.	257
89	Pages 245-246-251-252 - Are Invoices from Banks Long & Co for items paid for by security staff- the applicant have noted the excuse such are paid for as the Burton Waters Management Bank account does not facilitate a credit card, but the applicant has enquired and such Lloyds account does support a debit card, which can equally be used and provide transparency as there are no supplier invoices attached on these invoices to affirm base cost - such is poor management. Disputed £138.40.	BWM bank account is managed by BLC and their directors are the only signatories on the client bank account. Client bank accounts cannot have a debit card and even if they could, it would be the directors of BLC that would be issued with them not BWM. BLC as managing agents are given the full support of BWM and as a professional company operate within the RICS client money guidelines as is evident by RICS three yearly inspections.	266
90	Page 253 - Invoice for £441 by Banks Long and Co for linking of between the Marina Office and Security office fire alarm panels -did the Marina office contribute to the cost? Disputed	This is money paid into BWM accounts (a negative expense). See point 29.	260

	£441.00.		
91	Pages 257 to 260 - illustrate a common management problem creating unnecessary cost- in that there is a maintenance contract for servicing two air con units every 6 months - normally any contract provides yearly checks - so instead of £192 - these are unnecessary costs -yet bizarrely there is no regular maintenance contract for the lighting and CCLV system which seems to have on-going issues and repairs for repairs already undertaken, there seems to be no usual 12 month warranty on works carried out thereby preventing duplicate costs, for work done on same repairs, already done some months ago - there seems to be no plan of checking these costs, but a mere acceptance -why? Disputed £534.91.	See point 30.	259
92	Page 262 - Invoice from G Lidgett Builders Ltd for £3,127.20 for works carried out - please specify where such works carried out and please provide other quotes that should have been obtained at the time. Disputed £3127.20.	Details of the works that were carried out are included on the invoice [581] [map ref. 92]. Items 1 and 2 were for works that were required following the H&S/FRA. Items 3 - 6 were for general maintenance items that had been picked up on an inspection of the site. This is an invoice for 6 individual items, one charged to management-int dec and repair and the remainder to roads-excluding maintenance and repair.	271
93	Page 261 & 263 -illustrates the issue raised in Point 84 above -On June 19 th Pipework services are called out to fix a overflow on a water heater at a cost of £72, then less than 3 months later, MB Electrical are called out to attend the water heater and a cost of £206.27 is incurred in replacing the heater element, whereas the common sense approach would have been to contact the original	Pipework Services attended to replace the float valve. MB Electrical attended to replace the element. These are two separate faults with the water heater.	210

	contractor, Pipework services, to investigate and perhaps the work would have been covered by guarantee. There is no real checking of matters, which would save unnecessary costs incurred. Disputed £206.27.		
94	Pages 265 -268 - it is noted rent remains the same for the Burton Waters Moorings. I refer to points 34 above. Disputed £15,630.00.	See point 34.	254
95	Pages 269-276 - it is noted the fees remains the same from Banks Long & Co, re the Estate Manager fee; such is unjustified for the service provided - Emma Surphlis insofar as the applicant and other residents have been concerned, has been the "Manager for Burton Water's" at Banks Long & Co prior to 2014 and to current times, with no increase on workload, as she has for some years, only worked 3 days a week at Banks Long & Co and attends one morning a week for a few hours at the site. The services provided by the agent are not value for monies, represent poor management and poor customer service and never reviewed. Disputed £36,000.	Refer to 35. If any queries or issues are raised outside of Emma's working hours, these are dealt with either by the Security team or Wendy Lester, or if it is an emergency then the Directors of the Management Company will act.	278
96	Pages 520 are re the water utility bills and the same questions are asked as previously herein on this utility bill; what the Anglian water Bills cover in terms of usage, the applicant has seen no bills to Beals Homes whom accessed main water for the Quays Development or the large water feature contracted within -why? How is water worked out for Burton Waters Moorings? Disputed.	It is assumed you mean page 320. See point 36 as the same scenario applies.	256
97	The applicant would like to qualify that all electricity bills paid for by service charge costs do not include any supply to any other third parties whatsoever?	Pages 239 to 244 are all electricity bills for BWM.	310

98	Page 331 -Rates Bill for £3,097.60 - to which area does this specifically cover? Disputed.	See point 26.	253
99	Page 377-389 -390-391-400-420-424 are invoices from Banks Long & Co. It is noted invoices from Banks Long and Co are with no accompanying suppliers invoice to affirm actual cost. Costs seem excessive. Disputed £317.24	Pages 377 is an invoice bought on BLC credit card and recharged to BWM. Receipt can be supplied if required. We have some [582]. Pages 378 and 379 were items paid for by a staff member and reimbursed. Pages 389-391 & 400, 420 & 424 items bought on BLC credit card and recharged to BWM.	266
100	Page 384 - what are the flags mentioned in the invoice for and what actual location? Disputed £32.50.	The invoice was for the replacement of flags to be displayed on the flag pole sited at the end of Park Lane [584] [map ref. 100].	187
101	Page 386 - Invoice for £386 - please advise of other quotes and confirm what the sun screen is for? Disputed £386.	The sun screen dispenser and sun screen were installed within the security office and is for the use of the security staff and landscaping staff due to the fact that they work predominately outdoors.	249
102	Page 421 - Invoice G Lidgett for £475.20 - please provide alternative quotes which should have been obtained? Disputed £475.20.	Due to the trip hazard established as part of bi-monthly inspection this work was deemed urgent.	271
103	Page 422 - Invoice G Lidgett for £552.00 - please provide alternative quotes, which should have been obtained ? Disputed £552.00.	See point 102.	271
104	Page 4213- Invoice G Lidgett for £934.8 - please provide alternative quotes, which should have been obtained and also explain why this has not been invoiced to Beal Homes, as the site of the Quays had not been handed over at that time. Disputed £934.80.	See page 427 where part of this was reimbursed. The remainder was for works to repair fences around site.	271

105	Page 425 - Invoice by MB Electrical Services for £2,254.44 - please provide alternative quotes, which should have been obtained and also explain why this was done and to which bollards in particular. Disputed £2,254.44.	This was for the replacement of the bollards on the main roundabout on site. The bollards were replaced as it was a Health & Safety risk without these directional bollards.	175
106	Page 426 - Invoice from TStar Solutions for £1,803.60 for reline car park marking -please confirm where such was carried out and provide evidence of such. Also provide alternative quotes. Disputed £1,803.60.	Tstar were instructed to reline the main car park and reline the lining within Ellison Quay.	211
107	Page 427 - Invoice G Lidgett for £258 - please provide alternative quotes, which should have been obtained, and also explain why this has not been invoiced to Beal Homes as the site of the Quays had not been handed over at that time. Signs should be part of Beal Homes cost. Will not pay £258.	This is not a G Lidgett invoice. This is an invoice to a company that damaged a bollard and is in the accounts as a negative expense.	311
108	Page 428 - Invoice from Fearn Plant Limited for emptying old compost bays and re fit new timbers and steel for compost bays at a cost of £5,850.00- is manifestly excessive by £3,245. Please provide alternative quotes you should have obtained at the time. Disputed £5,845.00.	We are unsure as to how Mr Fernie feels that it is manifestly excessive by £3245. Mr Fernie has not provided alternative quotations to support this figure.	179
109	Page 429 -Invoice from Allen signs for £99.62 - where are these compost bin signs? Disputed £99.62.	The compost bins signs are located on the compost bins [586].	212
110	Page 430 - why do you insert duplicate invoices into the accounts - can the applicant please qualify this has only been paid for once? Disputed.	There are duplicate invoices within the accounts due to the fact that the charges are split between different headings. We can confirm that the invoice has only been paid once, however, it has been accounted for in different areas of the service charge accounts hence why there are more	312

		than one copy of some invoices.	
111	Page 431 - Invoice for £1,020 from Lindec - what is it for and where was the work carried out? Disputed £1,020.	Email quote 22.07.16 [587 - 589]. Two camera poles, pedestrian gates park lane, bin on The Landings [map ref. 111].	213
112	Page 433 - Invoice from MB Electrical for £902.66 - please provide the list of 29-9-16 as mentioned and also explain costs of work done on actual Marina lighting, which is owned by Burton Waters Moorings, as it states work done and clearly paid for by Leaseholders for works to; Lock Light Pontoon Gate. Marian Light. Disputed £902.66.	M B Electrical are provided with a list of defective lights which are recorded by the security officers on their patrols. When there are a significant number of lights that require attention, then the electrician will attend as it is not cost effective for the them to attend to one light at a time. The light on Pontoon gate 2 has been replaced at the cost of the management company as this lighting is required for viewing the CCTV and access control equipment on this gate. As stated previously, the Moorings company pay a significant amount of money to the service charge which takes into account these additional services that they benefit from.	175
113	Page 436 - please explain the why Banks Long and Co are carrying out the action of obtaining quotes for a Gazebo on the Moorings - was such works ever carried out? Disputed.	A quote from Lindec for the painting of the gazebo on the Mooring was not carried out as it was felt that the decoration of such was at an acceptable standard. The management company are responsible for the gazebo on the Moorings as this is available for any resident of Burton Waters to use.	313
114	Page 437 - to what does this email pertain to? Disputed.	The email is the quotation for the replacement of the five benches to be installed on the Landings. Five benches would be ordered at the same time so that they are all of the same type. The current style is now unavailable therefore BWM decided to purchase ones that would not need future maintenance and would replace them	214

		on site as and when the current ones became unusable.	
115	Page 446 - The Invoice from MB electrical for repairs to the boatyard lamps, why is this a charge for Leaseholders within the service charge? Disputed £194.04.	All lampposts on site other than those within Woodcocks, David Lloyd or Care Home are the responsibility of BWM [590].	187
116	Page 439 -Invoice from MB Electrical for problems with a lamp on the quays, for £126.00 - the quays were still not handed over and were in control of Beals Developments. Will not pay £126.00.	We did not recharge to Beals as it was blown off in the wind so an act of the weather not a defect.	200
117	Pages 438 to 449 - is a host of invoices for repair and lamp replacements totalling £5,076.20, but does not fully identify, which lampposts in regard to leaseholders service charge costs are true and correct, moreover it seems there is an invoice to Burton Waters Moorings for only £142.82 and then one from Burton Waters Moorings for £568.73 {page 441} what is this for- lighting costs are not really fully explained and there seems to be work carried out for Burton Waters moorings, which is not fully accounted for. Full explanation of whom owns the lighting columns, whose responsible for repairs and any contracts that affirms such, are requested. Disputed £5,076.20.	See point 45.	175
118	Page 450. Invoice for £150 from Upper Witham -please explain? Disputed £150.00.	See point 47.	190
119	Page 451 and 452 - from Allerton shows work being done re the Service Storm Pump, as initially instructed by Banks Long & Co for Beal Developments but the cost of £180 is	See Point 46.	190

	paid for by Leaseholders service charges - why? Disputed £180.		
120	Page 453 -Invoice from David Roark Landscapes - for the purchase of tipper van for £6,900.00-why is the management company buying a vehicle over 10 years old, which is liable to be more expensive in running costs and maintenance? Disputed £6,900.00.	The tipper van was purchased from David Roark Landscape as at the time this was a cost-effective solution to providing an additional vehicle to the landscaping staff. The cost for a newer vehicle is excessive and due to the fact that there is limited use on site, it was felt by the Management company and the Directors that this provided a good value solution.	215
121	Page 457 - Invoice for £362.66 for another Hedge Trimmer - what other quotes were obtained? A similar model can be bought for £170, which would have saved £192.86. Disputed £362.66.	The hedge trimmer was purchased from Green Stripe who provide equipment to Burton Waters Management Limited. The costs are felt to be acceptable to the management company, they are checked against current prices available online. However, by purchasing from a local company it insures that if there is a problem with the product that they do rectify the problem with no delay to the management company.	216
122	Page 459 - An invoice from Banks Long & Co -no real explanation what the inspect and repair was for - why? Disputed £156.	This was for an invoice from JM Motors paid for by BLC and recharged. Grounds staff accidently hit fuel cut off switch on new vehicle as they were unaware it existed.	267
123	Page 466 - An invoice from "Cash Sales Normanton II what was £2,515.80 paid for? It seems to be for a pressure washer, the applicants nor other leaseholders have seen the use of any pressure washer anywhere on site, and if such was purchased for use on management vehicles, the cost seems disproportionate for use. Disputed £2,515.80.	Proforma Invoice is an accrual. 50% posted to be invoiced by BW Moorings when actually purchased.	217

124	Pages 467 to 482 - monies spent at Co-op are most expensive for petrol and grocery, the overall cost of £2,404.08 is simply excessive. Main supermarkets could have been used, which are less than one mile away from the Co-op, saving some 10% - why was this not monitored? Disputed £2,404.08.	See point 28.	257
125	Page 483 -Commercial insurance at £8,024.39 - please provide other quotes you should have obtained at the time. Disputed £8,024.39.	Bluefin are the insurance brokers used by Burton Waters Management Limited. The brokers obtained quotations from the market and advised as to the best value and best offer for Burton Waters Management Limited.	244
126	Page 484-485 - Invoice from Burton Waters Moorings for portion insurance please explain what this covers and what other quotes obtained? In order to understand the portions of insurance attributable to Burton Waters Moorings - please explain the workings in further detail and as to why the Burton Waters Management simply do not seek their own cover? Disputed £365.78	Under the terms of the lease between Burton Waters Moorings Ltd and Burton Waters Management Ltd, the Mooring Company is responsible for insuring the building and they then recharge the proportion of the security office and landscape store.	314
127	Page 486 487 - Are invoice from David Roach Landscapes - please provide where these plants, clearing, spraying where planted/ located in terms of the grass park Area and Gazebo area and where any of these costs attributable to Beal Homes/Developments and or Burton Waters Moorings Ltd.? The amount of £3,921.00 seems high. Please provide other quotes obtained at the time? Disputed £3,921.00.	Page 486 was the Ivy along the fence of Ellison's Quay. Page 487 was for The Moorings and the areas outside the Moorings car park [591] [map ref. 127].	187
128	Page 489-492 -Emails/receipts to Wendy Lester for supply of plants at £217.75 Please explain where these plants where located? Disputed £217	Planting scheme designed by horticultural apprentice and approved by BWM for Landings roundabout. Plants and materials ordered online by	187

	75.	Wendy Lester and re-imbursed [592 - 597] [map ref. 128].	
129	Page 493 - The invoice from B & B Tree Specialists for £780.00 - please advise where this work was carried out. Disputed £780.00.	Park Lane inside main gate along road and behind houses along edge of towpath [597] [map ref. 129].	315
130	Pages 496 to 500 -Please explain why £1,400 was spent on Skips and where they were used? Disputed £1,400.00	See point 55.	180
131	Pages 505 TO 769 - the applicant requires all 2016 invoices to Beal Developments Ltd, Burton Waters Moorings Ltd and Burton Waters Marina Ltd as they are not fully disclosed in the documents inspected. The costs incurred are very vague and not area specific, nor are time spent carrying out such works fully invoiced, the applicant requires more descriptive work and other costs, including fuel, wear and tear, chemicals, paints, equipment used, which are not shown on the few invoices the applicant has seen	They were disclosed in the files seen by Mr Fernie along with the worksheets for invoices to BW Moorings, Beal Homes and BW Care Home are all attached to the invoices. The invoices to BW Marina are attached to BW Moorings invoices but again are in the file if needed.	316
	- proof of payment is required of all, as none are marked as paid: the invoices seen are for various works carried out, in relation to invoices for landscaping and cleaning toilets are, of serious concern in that the following areas seem to exist; of poor accounting, manifestly undercharging and lack of correct hours spent.	Theses invoices are proof of payment as they are not entered into the service charge until the monies are received.	316
	a. The labour rate charged for Burton Waters Moorings, Burton Waters Marina and Beal Developments is £9.32 plus 0.85p per hour "Employment costs" {which are not defined} the costs do not include materials used, petrol for the lawnmowers, weed killer, wear and tear or any other cost. The charge per	Refer to point 56.	316

	hour is £10.17.		
	b. Reviewing the invoices to Arbor Living in the 2017 accounts, they paid for the same services provided to the companies above but at a rate of £26.25 per hour; a 158.11% difference.	Refer to point 56.	316
	c. The national employed contract rate in 2016 as per the Association of National Landscapers contractors rate was £15.50 per hour. This excludes use of any equipment/petrol, pesticides or any other materials used in the course of the work, like gloves, bags.	Refer to point 56.	316
	d. A normal contractors rate including use of equipment and charging for materials is £35/40 per hour.	Refer to point 56.	316
	e. Clearly Burton Waters Management has been manifestly undercharging Beal Homes/Developments {Mr Richard Beal and Mr Rik Costall} and Burton Waters Moorings Ltd {Mr Rik Costall} to benefit those directors and their respective companies, - if they had been charged even at the rate charged to Arbour Living -the income received should have been substantially more.	Refer to point 56.	316
	f. Burton Waters Marina has also been manifestly undercharged.	Refer to point 56.	316
	g. Notwithstanding the above, it is clear and evident that the rates charged to Beal Homes/Burton Waters Moorings and Burton Waters Marina, do not cover the costs of materials, in essence the costs charge, will not cover overall staff costs per hour, and service charges funds are being used,	Refer to point 56.	316

	to support the financial benefit of these companies.		
	h. There is no charges for wear and tear of equipment or any material used; such as petrol, and other garden equipment and ancillary items.	Refer to point 56.	316
	i. The solicitor Mr Holt acting for the respondents has affirmed there are no contracts that exist in his letter of 10-9-18, for the provision of the landscaping services by Burton Waters Management, which demonstrate very poor management and commercial awareness, by the Respondents.	Refer to point 56.	316
	j. There are no charges for work done by security or provision of CCTV services for these companies.	Refer to point 56.	316
	k. It is clearly evident that leaseholders are paying through the service charge to subsidise works done for the respondents at a considerable cost and detriment. Other parties also benefit from the poor management, which will always exist due to the conflicts of interest that will arise through the directors of the management company and their third-party companies acting for the self-interest and financial benefit. The court should carefully scrutinise what is happening in the management of the Management company and its actions.	Refer to point 56.	316

	I. Disputed. It is suggested based on 2017 -that until all invoices are received it is estimated in excess of some £14,000 has been lost through undercharging and such should be credited to the service charge funds for this period.	Refer to point 56.	316
132	Page 813/814 - £930.93 paid to Joanne Costall - for dealing with an issue re Security guards - what was the issue about, what other quotes were obtained for such work and why were Banks Long & Co incapable of resolving? Normally fees for professional consultancy work include travel - why was such paid extra in this case? What other quotes were obtained, was there a conflict of interest with Ms Costall being the wife/relative of the director Mr Rik Costall? Disputed £930.93.	JCC Ltd have been used by Burton Waters Management Ltd as they are considerably cheaper than Wilkin Chapman LLP. Banks Long & Co are a firm of surveyors, we do not specialise in property or employment law. If there is a dispute under the terms of the lease or an employment issue, then a specialist a consultant is required to advise accordingly. There is no conflict of interest with Mr Costall. Fees for employment law advice in regard to security officers, holding meetings with said officers and producing agreements for BWM as per page 814. See point 86.	292
133	Page 815 - £500 paid to Joanne Costall - for dealing with an issue re Security guards - what was the issue about, what other quotes were obtained for such work and why were Banks Long & Co incapable of resolving? Normally fees for professional consultancy work include travel - why was such paid extra in this case? What other quotes were obtained, was there a conflict of interest with Ms Costall being the wife/relative of the director Mr Rik Costall? Disputed £500	This invoice was nothing to do with employment law. It is to do with the items stated on the invoice in regard to the leaseholders' handbook. + see point 132.	292
134	Page 816 - Please explain why The Management company is paying Banks Long & Co £600 as instructed by Eastman Securities to do recommended service charge issues, site inspection - more detail is	See point 59.	281

	required? Disputed £600.		
135	Page 817 //818 - £930.93 paid to Joanne Costall - for dealing with an issue re Security guards - what was the issue about, what other quotes were obtained for such work and why were Banks Long & Co incapable of resolving? Normally fees for professional consultancy work include travel - why was such paid extra in this case? Moreover, all the issues seemed to fall within the defined area of estate management, which should be covered by Banks Long & Co? Was there a conflict of interest with Ms Costall being the wife/relative of the director Mr Rik Costall? Disputed £939.20.	Page 818 shows a breakdown of the charges on invoice 817. As previous, said BLC are not solicitors and various items need be queried as to the likelihood of a court finding in our favour or a legal opinion in regard to a lease breach etc. + refer to point 132.	317
136	Page 819 -why is Burton Waters Management Ltd paying for work done by Banks Long & Co for Burton Waters Moorings issuing 413 letters re Burton Waters Moorings Rules and Regulations and the postage of such? Disputed £123.66.	This was the costs of issuing the revised handbook and regulations to all leaseholders.	283
137	Page 820- Invoice fees for Debt Chasing Letters by Banks Long & Co, which should be within the Management fee of Banks Long & Co? Disputed £2,196.00.	See point 62.	278
138	Page 821 -824 - Re court/debts fee charged by Banks Long & Co to the management company - was these recovered? Disputed.	See point 62. This money is added to the leaseholders' debt and recovered from them therefore no overall charge to BWM.	284

139	<p>Page 822 - £874.2 paid to Joanne Costall - for dealing with an issue re Security guards - what was the issue about, what other quotes were obtained for such work and why were Banks Long &amp; Co incapable of resolving? Normally fees for professional consultancy work include travel - why was such paid extra in this case? What other quotes were obtained, was there a conflict of interest with Ms Costall being the wife/relative of the director Mr Rik Costall? What does the payment to DVLA cover? What qualifications did Ms Costall have, which made her suitable to advise on this issue? Disputed £874.20.</p>	<p>Breakdown of legal advice as per page 823. Same answer as all others in regard to this supplier. Refer to point 132.</p>	292
140	<p>Page 826 -827 - please explain the invoice of £120 from Lincoln Auto Locks? Disputed.</p>	<p>A vehicle had been abandoned in the Landings car park. To enable removal, an application to the DVLA had to be made. Once it was established that the abandoned vehicle could be removed. The locks were changed so to remove the vehicle.</p>	218
141	<p>Page 822 - £745.25 paid to Joanne Costall - for dealing with an issue re Security guards - and applicant, what other quotes were obtained for such work and why were Banks Long &amp; Co incapable of resolving? Normally fees for professional consultancy work include travel -why was such paid extra in this case? What other quotes obtained, was there a conflict of interest with Ms Costall being the wife/relative of the director Mr Rik Costall? What qualifications did Ms Costall have, which made her suitable to advise on this issue? Disputed £745.25.</p>	<p>See point 139. Breakdown is at page 829.</p>	292

142	Page 830 - The fee for Data Protection is noted at £35 - The Management company agent Banks Long & Co has now admitted in communications dated 7-8-18, that it had no written privacy statement until June 2018, showing woefully inadequate management and protection of service charge holders data and personal details for many years, despite service charge holders being charged the sum for a data protection fee. Disputed £35.00	See point 67.	219
143	Pages 835 to 838 Invoices from Banks Long & Co for 2016 period management fees. When were these fully reviewed? Disputed £32,400.00	See point 69.	278
	<b>2017</b>		
144	Page 14-Invoice from Lincoln Security for £515.68 - why is the sum of £515.68 - being paid by the Management company for a Marina Toilet issue? Will not pay £515.68.	Recharged to BW Moorings on invoice 2138. Paid See point 154 [836].	145
145	Page 15 - Invoice from Lincoln Security - why is the sum of £1,19.88 - being paid by the Management company for a Quays Gate issue when the site was still owned by Beal Homes and not then handed over? Will not pay £1,19.88.	All occupiers of the Quays are benefitting from the security provided by the gate, therefore the management company are responsible for the cost of any repairs. Since the Burton Waters development was first developed, the costs for the maintenance of the access control and security systems benefitting the occupiers on site are paid and charged to the leaseholders through the Management Company.	200
146	Page 23 - Invoice 143209 by Lincoln Security - was the damage to the Barrier caused by someone driving into such, recovered, as the management company do have 24Hr CCTV? Will not pay £318.48.	Were unable to recover as could not read all of number plate of vehicle visiting site. Less than insurance excess.	220

147	Page 24 - Invoice 143209 by Lincoln Security for £1,440 maintenance inspection were other quotes obtained and does it include any work done on the Quays, or the then new development Maria Court, within the new development by Beal Developments ltd? Disputed £1,440.00.	See point 75.	155
148	Page 26 -Invoice Lincoln Security - why is the sum of £924.19 - being paid by the Management company for a Quays Gate issue when the site was still owned by Beal Homes and not handed over? Will not pay £924.19.	See point 145.	200
149	Page 27 - Invoice for £199.56 - for issues with gates at the Lodges - what Lodges? No invoices for such works to the Lodges of any description or in any capacity been provided in 2017 accounts for such work to whichever party is liable? Will not pay £199.56.	The Lodges pay an enhanced percentage to take into account the monitoring of the CCTV system that monitors the gate. The security staff spotted thee gates were broken and asked Lincoln Security to fix. This is an error on the part of the security staff.	318
150	Page 28 - Invoice 145300 - is for further work on the Ellison's Quay Gate at a cost of £ 646.92 - £162.58 had already been spent on such 5 months earlier-why is there no monitoring of work done and querying of such previous repair work? Disputed £646.92.	Repairs and maintenance are an ongoing issue that cannot be left unrepaired because it was not budgeted.	159
151	Page 33 - Invoice 146462 from Lincoln Security for £83 -work done on Pontoon Pedestrian gate re Marina and Quays Pedestrian gate - have these been recharged to Beal developments and Burton Waters Moorings? Will not pay £83.	This invoice is for minor adjustments to 3 separate gates all of which are maintained by BWM [map ref. 151].	187

152	Page 34 - Invoice 147068 for £8,607.43 is work under taken by Lincoln Security - please provide alternative quotes obtained at the time? Disputed £8,607.43.	As we have constantly said, we use one company so that we get a site wide continuity. If they are supplied by another supplier they may not work with our other systems and then we would need to work with several different companies if a fault cannot be traced. The applicant misses the point about how best value works. It does not mean 'cheapest'. Lincoln Security are a regular contractor. They know the site well. R1 is satisfied with their work and service. They know R1's systems, having installed most of them. There is no evidence that the work could have been carried out cheaper, but if it could have, that ignores the risks associated with a new contractor for leaseholders.	160
153	Page 36 -41 Invoices 14 7498 and 149344 from Lincoln Security totalling £288.00 - work done on Quays Pedestrian gate and marina vehicle gate - have these been recharged to Beal Developments and Burton Waters Moorings? Will not pay £288.00.	None of this invoice would be recharged to anyone else. Since the Burton Waters development was first developed, the costs for the maintenance of the access control and security systems benefitting the occupiers on site are paid and charged to the leaseholders through the Management Company, no matter what part of site you live on or whether you are residential or commercial.	161
154	Please confirm this invoice was paid by Burton Waters Moorings and provide proof of the payment of £515.687 Disputed £515.68.	See point 144.	319
155	Page 44 -what does the amount of £2,010.46 refer to? Disputed £2,010.46.	As you saw in the file this is an accrual for the Marina Pedestrian Gate Access Control system to be renewed.	170
156	Page 46 - Invoice from Lincoln Security for Annual Maintenance of CCIV system at £996.00 -what other quotes provided at the time? Disputed	The Management Company are happy with the service that is provided by Lincoln Security. The costs are comparative to alternative companies.	155

	£996.00.	They know how the system is set up and have a good response time to call outs. In the past the Management Company did use a cheaper company, however, response times were poor, and the works undertaken were not acceptable.	
157	Pages 49 -Invoice from Fearn Plant for £5,340 - what was this for, please provide other quotes obtained at the time? Disputed £5,340.00.	[840] Ducting and Groundworks for Point 158. Most of this was accrued in 2016 [map ref. 158].	162
158	Page 51-52 - Invoice for £7,560.00 by Lincoln Security - what chalk path was the camera relocated upon, and please provide other quotes obtained at the time? Disputed £7,560.00.	As invoice states to relocate camera 7 due to trees now obscuring the view from this camera and bring it forward to view the junction of Park Lane & Marine Approach. To supply and install new camera on to the Chalk Path with appropriate fibre optics £4500 was accrued for this in 2016	162
159	Page 53/5455/56 - is work under taken by Lincoln Security to the value of £4,410, with work done on the Marina, please provide alternative quotes obtained at the time and whether Burton Waters Moorings or Burton Waters Marina were charged for such works carried out? Disputed £4,410.00.	These were routine replacement of cameras as they reach the end of their life and/or the picture quality deteriorates and technology improves. £1240 was accrued in 2016 towards this.	163
160	Page 57 - Invoice by Banks Long & Co for £722.34 two Panasonic TVs, where is the original supplier invoice and where are the TVs? Disputed £722.34.	The TVs are in fact the monitors that security view the CCTV images on. Banks Long & Co purchased these on their credit card, so to save monies as they were cheaper than from Lincoln Security.	265
161	Page 83 and various -re invoices for VW Rentals Security car, invoices for a contract hire car for security to use. The applicant asked for the quote sought at the time, as the cost was high in comparison to other identical vehicles by £132 per month - no explanation provided. Costs disputed	See point 20.	237

	for period.		
162	Page 96 - It is noted that the security vehicle was replaced in September 2017 - it was replaced with a larger vehicle - further why was £485.18 paid for damages to the previous VW Polo? Disputed £485.38 However, why was a 5-door vehicle purchased and not a much cheaper one as the vehicle is only minimally used by one person at any one time. There was plenty of more suitable models for less than £150? Costs of hire car disputed.	BWM directors wanted to be greener therefore quotes for Hyundai and Toyota were acquired. We did test drive an electric car, but it would not have been possible to charge the vehicle. The hybrid car is saving money as the fuel usage is considerably down. Hyundai was more cost effective and even though it is a bigger car it is cheaper to run. The new car costs £0.70 per month more than the old one.	238
163	Page 100 - Commercial Motor vehicle insurance for £3,034 - seems very excessive, please provide other quotes obtained at the time? Disputed £3,034.	Bluefin are the insurance brokers used by Burton Waters Management Limited. The brokers obtained quotations from the market and advised as to the best value and best offer for Burton Waters Management Limited.	244
164	Page 102- Please explain why £250 was paid re AW Accident repair? Disputed £250.	Security Officer reversed into a post and damaged the car; this is the insurance excess to repair. Due to contract hire agreement has to be repaired at authorised repair centre.	321
165	Pages 261-262-265-274-279-283-287-294-295-302- re Mohawk Security, which was paid £3,469.40 -why? Disputed £3,469.40.	See point 24.	153
166	Page 303 - Banks Long and Co Invoice for Sharp Microwave - what is it for? Disputed £50.40.	Replacement microwave for the security staff to heat their food. The staff work a 12 hour shift with limited options on site for meals.	266
167	Page 304 - Banks Long and Co Invoice for Hoover - what is it for? Disputed £52.79.	Replacement hoover for the security office as security staff clean the office on a rota basis during night shifts.	266
168	Page 354 - Banks Long and Co Invoice for £59.92 what is the kettle	Replacement kettle for the security	266

	for? Disputed £18.53	office.	
169	Page 305 - Banks Long and Co invoice for Estate Manager - see earlier comments - fees are not reviewed. Disputed.	See point 35. These fees were reviewed at the end of 2017; BLC did not propose a fee increase on this.	278
170	Page 306/307 - West Lindsey Council Rates Bill for £2,904 -see earlier comments re previous rates bills. Disputed.	The rates bill is for the grounds store, as detailed on the bill. This is for the store used by the ground staff to store all equipment used by them.	253
171	Pages 355 - Invoice for security car - see earlier comments re this car in 2016 file. Disputed.	Page 355 is for replacement first aid box items totalling £9.83 and is nothing to do with the security car.	249
172	Page 356 - Banks Long and Co Invoice for Hoover {see Page 304 -point 166} what are service charge costs paying for another Hoover? Will not pay £76.73.	The first hoover was dropped when hoovering the security office stairs and broke. Therefore, this is the cost of replacing the hoover.	266
173	Pages 358-363 -Why are service costs paying for £294 for a fire extinguisher in the Marina Boiler House and room and what is the other Boiler Room? Should these fees not be paid by Burton Waters Moorings or Burton Waters Marina? Disputed £196.	Pages 358 & 359 were for the servicing of fire extinguishers on site. Page 360 is an accrual for replacing all fire extinguishers with new 10 year models. Better prices for ordering in bulk therefore will recharge once on site.	249
174	Pages 364 - 374 - Fee of £2,640 - paid to Hunt Sykes for Health and Safety Management Services { please provide any agreement} why are leaseholders service charge funds, paying extra fees for a service, which seems to provide little value for monies and then leaseholders additionally pay Joanne Costall to advise and prepare bespoke policies on the same matter? This is an excessive and unnecessary costs, better management of such could be achieved. Disputed £2,640.	Hunt & Sykes were employed by the Management Company to provide H&S advice to the Company. They replaced Arion Ltd. They were paid a retainer to provide advice, produce audits and policies, and to carry out regular visits to the site. Jo Costall Consultancy reviewed the policy documents on behalf of BWM.	322

175	Page 376 - Invoice from Lindec for £2,706 - this is extremely expensive - and has it seems been done before by G Lidgett -why done again in such a short space of time? Disputed £2,706.	This invoice is for repainting of the security office interior and the railings on the balcony and does not pertain to point 41.	221
176	Pages 382-386 -Invoices from Burton Waters Moorings -please see earlier comments, it is noted the rent has gone up, how was such reviewed? Disputed£ £17,629.10.	Invoice 383 is for back rent due to the increase in rent. The rent was reviewed in accordance with the lease. Page 382, 384, 385 & 386 are quarterly rent invoices.	323
177	Pages 387 - 397- Banks Long & Co Estate Manager and Management Fees are too expensive at £35,800 -see earlier comments in 2015-2016. Disputed £35,800.	See point 35.	278
178	Page 398 - Costs of £81.34 by Banks Long & Co -where is the actual supplier cost? Disputed £81.34.	Supply of stationery to BWM from BLC.	266
179	Page 399-401 - Costs of £225.16 by Banks Long & Co for Tea Bags and Coffee? Disputed 225.16.	Page 399 is a BLC invoice for Black Markers at £10.78. Page 400 is a Micro Computers invoice for Ink Toner Cartridges for the security office printer. Page 401 is a BLC invoice for 5 reams of paper (a box).	266
180	Pages 405-408 -Invoices to Complete Business Solutions Group Ltd demonstrates costs are not monitored, as £13.55 paid for Basildon Bond Envelopes DL Pack of 100 - same can be bought for £6.02. A total of £85.24 paid- overpriced by some 50%. £42.62 could have been saved -poor management and unnecessary costs incurred. Disputed	BLC withdrew their credit facility for purchasing items and recharging. Therefore, companies have been sought that will offer credit terms to BWM. BWM do not use great amounts of stationery items so buying in bulk is a false economy as large amounts are wasted due to glue no longer sticking etc. To this end, smaller amounts may cost equal to larger. Some items are cheaper than others - so the cost often evens itself out over items.	257
181	Page 503 - This is an invoice from Lincolnshire County Council to Banks Long & Co for £360 - it is not to Burton Waters Management Company and is therefore not an allowable cost.	[843] [map ref. 181] A road safety audit was carried out as the cost of the works to bring the pedestrian crossing into an acceptable standard were excessive. Lincolnshire Road Safety Partnership	324

	<p>Moreover, why was such road safety audit instructed. Burton Waters Management had affirmed they had instructed a report before 2016 and such report affirmed the Zebra Crossings were fine. It is also noted Mr Richard Beal in correspondence on 28-6-18 affirmed the costs of repair of the zebra crossings of £900 was disproportionate. Mr Andrew Holt, respondents solicitor affirmed, in a letter dated 20-10-2016; "That both Zebra Crossings are considered to be in good order. The Management company has consulted a qualified Highway and Transportation Engineer. No concerns have been drawn to the attention of the Management Company". The applicant asked in response to this letter; sight of the advice of the Highway Engineer from Mr Holt, no reply or report upon such request was forthcoming. The Safety Audit report provided by the respondents solicitor, which took place in May 2017 -advises the developer states the beacons on the zebra crossing have not been working for a few years. It seems there is confusion as one minute they are in good order, the next they are as affirmed as not working. The management company and its directors and solicitors, all seem to have differing views. However, in any event, the management company wilfully neglected important health and safety issues affecting leaseholders and residents, exposing the leaseholders and the management company to gross unnecessary risk -why? Will not pay £360.</p>	<p>produced a report which confirmed that the crossing could be removed. This was done.</p>	
182	<p>Page 505 - Invoice from Beal Homes for £113.83 - what is this for and why is this a leaseholders service charge cost? Disputed £113.83.</p>	<p>Pages 505 - 508 as page 505 shows this is recharge from Beal Homes to BWM for the annual Agricultural Drainage Rates for the site. Pages 506-508 are the backing documentation</p>	222

183	Page 509 - Invoice from G Lidgett Builders for £1,529.10 - to Banks Long & Co and not Burton Waters Management Company and is therefore not an allowable cost. Moreover, more detail of the work is required. It is noted that the charge for labourers is £43, which is a very different figure than that, which is charged by Burton Waters Management to Beal Developments, Burton Waters Moorings and Burton Waters Marina for labour supplied. Disputed £1,529.10.	This invoice was part charge to BWM and part charged to BW Landings and paid from the requisite bank accounts. Invoice states what work was completed and where.	271
184	Page 510 - There is an email from Emma Surphlis, which states a £300 charitable donation is being made. It is not a decision that should be made by the leaseholders company to make charitable donations without full consent of leaseholders, as it is not a reasonable cost. Will not pay £300.	This is for replacing the ropes and all the flags on the flagpoles at the end of Park Lane at a cost of £236.43, see point 185. We then donated £63.57 to the boat club for their time to do the actual work on re-roping etc. Therefore £300 cannot be in dispute. Historically this work had been completed by an outside contractor and cost almost £600 therefore a cost saving of 50%.	223
185	Page 512 to 516 - Invoice from Burton Waters Boat Club for £275.84- where is the flagpole? Disputed £275.84.	See point 185. Boat club did the work, we paid them and gave them a small donation [846] as they are a charity [map ref. 185].	223
186	Page 517 - Invoice from MB Electrical for £917.60 for electrical work in regard to removing Zebra crossings - this cost is more than the cost of repairing, as Mr Richard Beal stated in his letter of 28-6-16. Will not pay £917.60.	The cables to pelican crossings were connected to other lighting therefore the power supplies needed to be separated and made safe before disconnection.	271
187	Page 518- Invoice from G Lidgett for £1,911.30 for removal of Zebra Crossings - this cost more than repairing the Zebra Crossing as Mr Richard Beal stated in his letter of 28-	Following a report from Road Safety Partnership, it was decided that the crossings would be removed rather than relocated to save money for leaseholders in the long term. This is	271

	6-16 of £900; Total cost of removal of Zebra crossing is £2,828.90; this is manifestly excessive, when if repaired in 2016, the cost would have been £900. Will not pay £1,911.30	the cost of undertaking that work.	
188	Page 519 - Invoice from G Lidgett for £1,247.50 - please provide alternative quotes obtained. Disputed £1,247.50	Invoice is for 2 separate items and not felt alternative quotes needed [851].	271
189	Page 520 - Invoice from Broxap for £2,095.20 - what is this for- it seems to be steel benches -where are these located - please provide alternative quotes? Disputed £2,095.20.	This is for the supply of benches at point 114. Accrued in 2016 therefore no actual cost in 2017.	191
190	Page 522 - Invoice from G Lidgett for £612.90 - please provide alternative quotes obtained. Disputed £612.90.	No alternative quote sought due to quickness of repair required due to trip hazard.	271
191	Page 523/524/525 - There is only one quote per job -why no other quotes obtained? Disputed.	Accruals.	224, 271 Duplicated
192	Page 526 - Invoice from MB Electrical for £949.32 - why are we paying for work done on Marina Lock Gate near the fuelling station? Disputed £949.32.	The invoice says the lock gate light was not working because the electric supply had been disconnect due to a fire at the fuelling station [852] [map ref 192]. If the lock gate light is not working, then the cctv cannot be viewed and therefore the marina area including residential areas is unsecure. They pay towards security as part of the service charge the same as everyone else.	164
193	Page 527 - Invoice from MB Electrical for £1,746.68 - please provide details of work done and other suitable quotes obtained at the time.. It is interesting to note the Quays lights are covered under warranty in 2017 -yet in 2015-2016 -The Quays lights repairs were paid for by service charge funds.	The invoice shows which street light bulbs were replaced. The Quays lights that had faults and had never worked were repaired by the developers' contractors, not BWM.	164

	Disputed £1,746.68.		
194	Page 528 - Invoice from MB Electrical for £1,496.40 - who are Marina Studios and where are they located, do they pay a service charge, please provide details of work done and other suitable quotes obtained at the time. Disputed £1,496.40.	Marina Studios are leaseholders on site, who all contribute to the service charge. Their work was not completed due to access issues as per invoice [853] [map ref. 193].	164
195	Page 529 - Invoice from MB Electrical for £763.48, please provide details of work done and other suitable quotes obtained at the time. It is also noted works done on pontoons in Marina, why are leaseholders costs being used to pay for such works? Disputed £763.48.	As previously stated, if we do not replace the bulbs above the pontoon gates we cannot see with the CCTV so we replace these bulbs. The ones on the actual pontoons are reported to BW Marina and they arrange repairs separately.	164
196	Page 536 -Invoice from Burton Waters Moorings for £568.73 for Lighting Colum charges - what is this and why is such being paid? Where is the agreement to pay such? Disputed £568.73.	This is for 18 lights that are billed to BW Moorings and they recharge to BWM [854].	225
197	Page 537 -Invoice from Burton Waters Moorings for £1,398.90 for 50% Contribution for Jet Wash and Ramp - what is this and why is such being paid - where is the agreement to pay such? On point 123; £2,515.80 was paid for a pressure washer? Why is the service charge paying for a pressure washer and a jet wash? Disputed £1,398.90.	The pressure washer is used for cleaning grounds equipment. It is also used around site for cleaning footpaths etc. 50% of the cost was recharged by BW Moorings as they bought it.	226
198	Page 538 - Duplicate Cash Sales Invoice from Normanton - please affirm was only paid once? Disputed £2,515.80.	See point 197 and 123. Backing paperwork to 197.	226
199	Page 539 -This is an invoice to Vicky Hillard - what is this for? Disputed £282.	See point 197 and 123. Backing paperwork to 197.	226

200	Page 540 - Invoice from Upper Witham for Parkers Drain -what is it for? Disputed £163.50.	See point 47.	190
201	547/551 - Invoice from Bluefin for Van Insurance - please explain what van -and what other quotes obtained? Disputed £704.85.	Additional Grounds Maintenance Vehicle adding to fleet policy.	244
202	Page 552 - An invoice from Mountain Motor Vehicles - what was the basis of this purchase? As a van had already been purchased {see point 120} Disputed £7,200.	This is an additional Ground Maintenance vehicle; so they have two now. This means they can take their tools and work in two separate areas of site as two teams. The vehicle must be large enough to carry mowers.	181
203	Page 559 - Invoice from Allerton for £180 - what is this for? Disputed £180.	See point 46.	190
204	Page 563 - Invoice from Bluefin for Fleet Commercial -what is this for and please provide policy and other quotes obtained? Disputed £3,034.94.	Bluefin are the insurance brokers used by Burton Waters Management Limited. The brokers obtained quotations from the market and advised as to the best value and best offer for Burton Waters Management Limited. The insurance is for the equipment owned by the Management Company including the CCTV/Access Control equipment and PL insurance for the common parts of the site.	244
205	Page 568 - Invoice from Upper Witham for hire of plant and Labour-what is it for? Disputed £120.	See point 47.	190
206	Page 587 - Invoice from Bluefin Insurance for £8,335.38 - please detail what the cover is for, and which areas with in the development, and what other quotes have been obtained and why no other brokers are used? Disputed £8,335.38.	See point 52.	244
207	Page 588 - Invoice from Burton Waters Moorings for £36 7.75 - for insurance of Marina Building and Management Building - please qualify what area this covers; what agreement exists to pay and please send a copy? Disputed £376.75.	Under the terms of the lease between Burton Waters Moorings Ltd and Burton Waters Management Ltd, the Mooring Company are responsible for insuring the building and they then recharge the proportion of the security office and landscape store.	255

208	Page 590/592/593 - Invoices from Sarah Mitchell to Banks Long - it is not to Burton Waters Management Company and is therefore not an allowable cost. Work seems to be have done re a boat? The applicant has checked with HMRC and they have affirmed any invoices not in Burton Waters Management Company Ltd, would not be allowed as Taxable expenses, thus £1,920 is not a recoverable expense by Burton Waters Management Comp any. Will not pay £1,920.00.	Invoice says tree work carried out at Burton Waters and the invoices lists the work done. Invoice simply names the wrong entity.	182
209	Page 595-599-600-601-602-603-604-605-606-607- -Invoices from LRCS Skips - what are these for, what other quotes obtained? Disputed £2,140.	See point 55.	227
210	Pages 610 to 935 - in relation to invoices for landscaping and cleaning toilets, invoiced to Beal Developments Ltd, Burton Waters Moorings Ltd and Burton Waters Marina Ltd are of serious concern, in that the following areas of poor accounting exist, undercharging and lack of correct hours spent or accurate recording of such is woeful management practice and monitoring; to the clear detriment of service charge funds and have not been reasonably charged.	Refer to point 56.	146
	a. Beal Developments Ltd - Beals only paid £1,800.25 for 147.Shrs from November 16 through to October 17 for Landscaping, weeding's, fixing and cleaning a water filtration system within the Quays.	Refer to point 56.	146
	b. Burton Waters Moorings only paid £6 ,989.07 for 553hrs cleaning toilets and landscaping work, painting and	Refer to point 56.	146

	cleaning and power washing jetty.		
	c. Burton Waters Marina Ltd paid £915.36 for 75hrs.	Refer to point 56.	146
	d. Arbor Living paid £3,360 for Landscaping.	Refer to point 56.	146
	e. The labour rate charged for Beal Developments Ltd. Burton Waters Moorings Ltd and Burton Waters Marina Ltd is £9.32 plus 0.85p per hour "Employment costs" {which are not defined} the costs do not include materials used, petrol for the lawnmowers, weed killer, wear and tear or any other cost. The charge per hour is £10.17.	Refer to point 56.	146
	f. Reviewing the invoices for Arbor Living, it paid for the exact same services as provided to the companies, which are owned by, or directors of Mr Richard Beal and Mr Richard Costall, {a rate of £26.25 per hour charged to Arbor Living}, However the difference in fee charge between, Arbor living and Mr Beal and Mr Costall's companies show; a 158.110/0 difference in undercharging, which is clearly to the benefit of Beal Developments, Burton Waters Moorings Ltd and Burton Waters Moorings Ltd, which financially benefits the respective directors and such undercharging, whilst not equal to all, is at clear detriment to service charge holders income.	Refer to point 56.	146
	g. The national employed contractors rate, as per the Association of National Landscapers contractors rate was £17.50 per hour. This excludes use of any equipment/petrol, pesticides or any other materials used in the course of the work, like gloves, bags.	Refer to point 56.	146

	h. A normal contractors rate including use of equipment and charging for materials is £35/40 per hour.	Refer to point 56.	146
	i. Clearly Burton Waters Management has been manifestly undercharging Beal Homes/Developments { Mr Richard Beal and Mr Rik Costall} and Burton Waters Moorings Ltd { Mr Rik Costall} to benefit those directors and their respective companies - if they had been charged even at the rate charged to Arbour Living -the income received from Beal Homes would have been for 147.5 hrs at £26.25 would have generated £3,871.87; taking away the sum already received of £1,800.25 - this would have generated extra income for the Burton Waters Management company of £2,701.62 and lessened service charge costs.	Refer to point 56.	146
	j. Burton Waters Moorings Ltd; if charged at Arbour Living rate of £26.25 for 553 hours would have generated £13,991.25 and taking away the sum already received of £6,989.07 - this would have generated extra income for the Burton Waters Management company of £7,002.18 and lessened service charge costs.	Refer to point 56.	146
	k. Burton Waters Marina Ltd; if charged at Arbour Living rate of £26.25 for 75 hours would have generated £1,968.75; taking away the sum already received of £915.36 - this would have generated extra income for the Burton Waters Management company of £1,053.39 and lessened service charge costs.	Refer to point 56.	146

	<p>i. There has been a loss of income of some £10 . 757.19 to service charge costs due to charging directors companies substantially much lesser rates.</p>	<p>Refer to point 56.</p>	<p>146</p>
	<p>m. The applicant based upon evidence of time spent, is not convinced that all the hours have been charged correctly as time sheets are not fully recorded.</p>	<p>Refer to point 56.</p>	<p>146</p>
	<p>n. Notwithstanding the above, it is clear and evident that the rates charged to Beal developments /Burton Waters Moorings and Burton Waters Marina, do not cover the costs of materials, in essence such low rate, will not cover overall staff costs per hour and are operating at a loss to service charge costs, which will benefit those companies of Mr Costall and Mr Richard Beal, the applicant alleges that such conduct is deliberately undertaken to undercharge services provided to them through Burton Waters Management Company Ltd to benefit their own respective companies and use service charge funds to subsidise their respective companies. The directors of Burton Waters Management Company Ltd have it is alleged by the applicant; acted against the best interests of the company and not acted in good faith by allowing such undercharging to their own other companies at the detriment of leaseholders service charge funds.</p>	<p>Refer to point 56.</p>	<p>146</p>
	<p>o. There is also a concern that through bad management; 775.5 hrs are spent supplying other services to directors companies; at a substantial loss, which is some 21 weeks of Landscapers full time work at 40hrs per week time, this is extremely poor</p>	<p>Refer to point 56.</p>	<p>146</p>

	management and is only done to benefit Mr Beal and Mr Costall's respective own companies, this is not reasonable management or conduct, as valuable employee hours, paid for by service charge funds are financially assisting these companies, with no advantage to Leaseholders, and other areas of works are being neglected or delayed to facilitate work for these companies. This is not reasonable. Undercharging disputed.		
	p. It is noted no charge in this year's account to any third-party company for security costs.	Refer to -point 56.	146
211	Page 936 -Please provide details of what specifically this quote of £1,010 plus vat was for and was such work carried out? Disputed.	This is an accrual for additional signage and would have been deducted against the 2018 accounts.	192
212	Page 951 - Please explain why service charge monies were spent on driving lessons and theory test at a cost of £258 for Michael Megget - who is he? If he was employed how long was he employed for -why is it a reasonable cost to employ someone whom has no driving licence, if it is a requisite for the position? Will not pay £258.	Michael has been employed as an Apprentice Gardener. Once his apprentice was completed, he was offered a full contract. Rather than a bonus for successfully completing his apprenticeship, the Management Company offered to pay for a number of driving lessons. There is no requirement for him to hold a driving licence to undertake his job role.	183

213	<p>Page 981 -The cost of gritting for 3 days as stated on the invoice from DRP is simply not cost effective and manifestly excessive - nor did the applicant or other leaseholders see any gritting in the extreme bad weather at all this year, there was no gritting on the Quays. Landscape staff used to do gritting, but it was advised in a Burton Waters Management company newsletter that asking staff to turn up for work early and paying extra hours was unreasonable and not cost effective. The applicant refers to the points made in point 210 above. Further having been provided with the contract by the respondents solicitor on 10-9-18- questions are raised about the contract - the agreement is between Banks Long &amp; Co and DRP not Burton Waters Management Company Ltd, various parts are blanked out, Ms Surplis signs on behalf of a blanked out person/company, the contract is to provide services to other sites but are blanked out and is only for the period 1-11-17 to 31-3-18; 4 months. Will not pay £5,086.24.</p>	<p>Historically, the landscaping staff did grit the site, however, after taking advice from the H&amp;S advisors, it was felt that asking staff to drive themselves on untreated roads, so to spread grit at Burton Waters, was not acceptable. Three gritting companies were asked to quote to spread grit on the main roadways and car parks of Burton Waters, this was felt to be a reasonable request, considering that Local Authorities and Highways only grit main roads [855]. Every time De-ice attended a report was generated. There was one instance when they were unable to attend; this was when the main roads into Lincoln were closed due to heavy snow fall. The advice from the authorities was not to travel. De-ice provided a discount as they did grit other sites managed by Banks Long &amp; Co.</p>	251
214	<p>Page 982 - Invoice from Physic Control - what is this for? Disputed £113.76.</p>	<p>Replacement of defib pads, following the use of such equipment. Unfortunately, the individual who the defib was used on did not survive, despite the use of the defib.</p>	249
215	<p>Page 984 - Invoice from Banks Long &amp; Co -why are we paying for Service Apportionment Opinion for 2017, which should be included within the management fees as charged by Banks Long &amp; Co.. Disputed £240.</p>	<p>See point 59.</p>	281

216	Page 985 - Invoice for £1,750 from Joanne Costall - what other quotes were obtained? There is a clear conflict of interest employing an immediate relative of Mr Costall - why do service charge costs need four classes of "bespoke employment contracts" - where is the "bespoke company handbook" and why is one needed? Please send copies of such. In fact, much of the work seems to be outsourced to Joanne Costall at unnecessary expense -why? What qualifications does this person have? Will not pay £1,750.	New employment contracts for all staff along with new staff handbooks to cover changes in employment law.	292
217	Page 987 - Can the applicant enquire that the Sage Pension Module in the Invoice from Banks Long & Co is an annual fee? Disputed £144.	It is an annual fee.	285
218	Page 989/992 - Invoices for £750 from HFL Financial Advisors in relation to Workplace Pensions - what other quotes were obtained. Disputed £1,500.	Additional quote was obtained and this was the best value for work to be done [857].	325
219	Page 996 - Invoice for £2,463 from Joanne Costall - what other quotes were obtained? There is a clear conflict of interest employing an immediate relative of Mr Costall - there is no attached schedule. Please affirm her qualifications and why she was chosen to give advice and what is it exactly for and why is it paid to the wife/relative of the Director Mr Rick Costall? What other quotes were obtained for the work? Will not pay £2,463.	JCC Ltd have been used by Burton Waters Management Ltd as they are considerably cheaper than Wilkin Chapman LLP. Banks Long & Co are a firm of surveyors, we do not specialise in property or employment law. If there is a dispute under the terms of the lease or an employment issue, then a specialist a consultant is required to advise accordingly. There is no conflict of interest with Mr Costall.	326
220	Page 994 - Invoice from Banks Long & Co for £1,782 for debt chasing letters - this cost should be within Management fees. Will not pay £1,782.00.	See point 62.	327

221	Page 995 - Invoice from White Hart for £88 for Restaurant Lunch and room hire - why are leaseholders service charge costs paying lunch and why hire a room when Burton Waters Management has its own offices and whom attended the meeting and what was it about? Will not pay £88.	This invoice was for room hire and coffees for BWM, BLC and BW Residents Group who will attest to this. BWM have a room that seats 4, BLC have a room that seats 8 max. Lunch was not included.	286
222	Page 996 - Invoice for £1,098.49 from Joanne Costall - what other quotes were obtained? There is a clear conflict of interest employing an immediate relative of Mr Costall - the attached schedule, shows that a 192 search was carried out and Land Registry Office copies sought re the applicant; why - when the only correspondence raised at that time was re complaints of poor service. Can the applicant qualify; that if you raise a complaint that a leaseholder/resident/representative will have a 192-search carried out and Land registry Office copies sought -is this normal practice? Why is so much work on issues that should be done by the Management company and its directors -carried out by it seems nonprofessional relatives of the directors? Will not pay £1,098.49.	JCC Ltd have been used by Burton Waters Management Ltd as they are considerably cheaper than Wilkin Chapman LLP. Banks Long & Co are a firm of surveyors, we do not specialise in property or employment law. If there is a dispute under the terms of the lease or an employment issue, then a specialist consultant is required to advise accordingly. There is no conflict of interest with Mr Costall.	292
223	Page 998 - Invoice from Best Western Plus for £85.00 for room hire - whom attended, what was it for and why not use own offices? Will not pay £85.00	See point 221.	286
224	Page 1002 - Invoice for £1,140.50 from Joanne Costall - what other quotes were obtained? There is a clear conflict of interest employing an immediate relative of Mr Costall. Why is so much work on issues that should be done by the Management company and its directors done by relatives of the directors? The applicant requires detailed explanation of all work done. Will not	R1 refers to the facts and matters set out in item 63 above; the nature of legal advice sought and the purpose for this is subject to legal privilege, save in the most general of terms as indicated on the invoice.	292

	pay £1,140.50.		
225	Page 1004 - Invoice from Best Western - why are service charge costs paying for refreshments -whom were they for? Will not pay £31.00.	See point 221.	286
226	Pages 1007-1010 - Invoices from Banks Long & Co -for Estate Manager and Management fees - all should be reviewed in relation to poor service and management provided. Disputed £31,200.	See point 35.	278
	<b>2018</b>	All leaseholders are invoiced at the beginning of a year based on a budget agreed with BWM, BLC and BW Residents Group. Invoices are paid during the year and at the year end the accounts are completed and audited by an Accountants who produce a set of accounts. Any shortfall is collected from leaseholders or credit note issued for an underspend. The 2018 Accounts are part way through the year. A number of re-charges need to be made, which will be done before the year end. The queries have been answered below, however, we do not feel, that Mr Fernie can claim that the accounts are not being run correctly, as we have not yet completed the review of them.	
227	Page 1 - Email from Sue Forster for SIA Licence for £220. Leaseholders should not be paying for staff licences {see point 2 herein}, as it is not normal within the industry. Will not pay £220.0.	See point 2.	138
228	Page 5 -Invoice from Lincoln security for Key fobs of two different types - why is this as all leaseholders and residents have same type of key fobs - please explain why two different	Key fobs for Marine Point Apartments differ from those issued to other leaseholders. The leaseholders within MPA are charged more for additional	148, 150

	types of key fobs? Disputed	fobs.	
229	Pages 8 - Invoice from Lincoln Security -work on pedestrian gates - which gates? Disputed £306.48.	Ellisons Quay [1099] [map. ref 229].	186
230	Page 10 - Handwritten note -what does this relate to? Disputed	These are access fob monies received from people purchasing the fobs.	148, 150
231	Page 11 - Invoice from Lincoln Security :...for £283.99 -what is this for? Disputed 283.99.	This was for an access control point replacement of the microphone and receiver. People were unable to hear response from security when pressing communication button.	165
232	Page 14 - invoice from Lincoln Security -for £66 - why are service charge funds paying for work on a pontoon gate? Will not pay £66.	It has been recharged to BW Moorings [1113].	328
233	Page 16 - Invoice from Lincoln Security for £817.02 for work done to damaged main gate - was the cost recovered from the owner of the vehicle whom caused the damage? Disputed 817.02.	This was Marine Walk gate. CCTV did not capture the incident. We wrote to leaseholders asking if they knew who had done but there was no uptake.	166
234	Page 18 - Invoice from Lincoln Security for £323.4 for work done to damaged main barrier - was the cost recovered from the owner of the vehicle whom caused the damage? Disputed 323.40.	Burton Waters Management are working on recovery of the sums spent. The matter is being passed to the insurance company.	166
235	Page 30 - Invoice from Lincoln Security for CCTV Annual Maintenance check for £996.00 please provide contract - please provide other quotes obtained at the time? Disputed £996.00.	Page 30 is a receipt for clothing for one security officer. Page 20 is for annual CCTV. As previously detailed, BWM is happy with the service that Lincoln Security provide. They know our system and all the parts that work together. They also provide the equipment to other users on site so that it works together.	155
236	Page 39 - Invoice from Allen signs for de-signing and signing new car at £328.81 - what other quotes were obtained? Disputed £328.81.	No alternative quotes were obtained because Allen Signs already have the artwork therefore did not need to be provided to a new supplier therefore no setting up costs. This is for removing	238

		the vinyl lettering so that it does not damage the paintwork and adding decals and lettering to new vehicle on several panels.	
237	Page 49 - Invoices from Jet for Fleet commercial Insurance for £3,515.35 - what other quotes were obtained? Disputed £3,515.35.	As previously said, we have a large age range of drivers and this is now for 3 vehicles. The cost is split between security and grounds.	244
238	Pages 52 to 69 - Invoices from Soldo Business for a Business Pre-Paid Credit card - why are service charge costs paying £25.20 per month - no transactions or statements seem to be available - please provide? Disputed.	Previously, the Management Company had a Coop Gold card (effectively a credit card). The Coop withdrew these cards. As the Management Company are unable to obtain a credit card or did not want to use cash, a SOLDO card was the only option available. Credit is added to this card once a month and is used for the purchase of fuel. A pre-paid card is the only card available to BWM due to it not making a profit. It is used to purchase fuel and items needed at BW via the internet. This comes at a cost of £21 + VAT per month which this cost is split between security and grounds (Page 50+58+62+ 65 + 69). Pages 53, 56, 57, 59, 60, 61, 63, 64, 66, 67 & 68 - As fuel is bought the receipt is emailed to BLC and they pay immediately so that the amount on the card does not drop below the agreed limit. Therefore, BLC approve each purchase.	263
239	Page 81-85-86-91-92-93 -104-105-106- Invoices from 1st Choice Security Solutions Ltd for £3,008.47- why was this firm used and what other quotes were obtained at the time? Disputed 3,008.47.	See point 24 - 1st choice security previously known as Mohawk.	167
240	Page 90 - Receipt from Woodcocks £60 - why are service charge funds paying hotel accommodation? Disputed £60	Due to adverse weather the security guard was unable to get home, as other guards were not able to get to the site. The guard offered to stay over, and then work. Otherwise there would have been no security on site.	168

241	Page 133 - invoice from Grants Cleaning for £132 -why are service charge costs paying for an office clean - why is it Burton Waters Management staff are used to clean Burton Waters Moorings Toilets/Offices at an operational loss, yet Leaseholders must absorb external contractors costs in cleaning security offices? Will not pay £132.00	This was a deep clean of the offices, following the replacement of the carpet.	261
242	Page 143 - Invoice from Freedom for £908.40 -it is noted Leaseholders are paying costs for Burton Waters Moorings and such says to be invoiced -but cannot see invoice, please provide such and proof of payment and also supply other quotes obtained at the time. It is also noted in point 173 - fire extinguishers were paid for and put in the same areas of Marina Boiler House /Boiler Room and Store Room to the value of some £300 but such was never invoiced -why and why was such not done in previous years in 15/16? Disputed; A sum in excess of £1,200 should be sought from Burton Waters Moorings Ltd for non-payment of fire extinguishers over the period 2015/18 and all other years previously.	See point 173.	249
243	Pages 144-14 -Invoices for Health and safety Management services from Hunt Sykes - why are service charge costs paying these sums? Moreover, in addition; considerable sums are being paid to Joanne Costall for providing bespoke health and safety policies - why are two firms being used to provide in essence the same service? The applicant is also concerned that Burton Waters Marina Ltd carried out sale events and charity events using the main Burton Waters car park and security staff on 2015/16/17/18, causing increased traffic and persons	Recharge has been made and is in the accounts 25 September 2018.	248

	on the site, with no monitoring. What Health and safety assessment were carried out for these events? Was Burton Waters Marina Ltd charged for use of the car park and time spent by security staff dealing with issues of overparking and other matters on the day? Leaseholders guests were unable to use the main car park on this event day, as it was full due to the event. Will not pay £480.		
244	Page 146 - Invoice from Lines Safe for £2,400 -why are service charge costs paying this? Will not pay £2,400.	Lincs Safe have replaced Hunt & Sykes in providing H&S advice. Again, the costs will be shared between Burton Waters Management and Burton Waters Moorings.	248
245	Pages 151-152-153 - Invoice from Burton Waters Moorings Ltd for quarterly rent of £4,245. This needs to be fully reviewed. - see earlier comments upon same topic. Disputed £12,735.	See point 34.	254
246	Pages 154 to 160 - Banks Long & Co Invoices for Management fees and Estate Manager - why have these risen, have they been reviewed- see earlier comments upon same topic? Disputed £28,950.	See point 35 + The Estate Manager cost which this relates has not increased. Pages 428-430 are for the Management Fee which was approved to increase by BWM and BW Residents Group following a period since 2008 where it has not increased.	278
247	Pages 213 - Invoice from B & C for £3,178 - this invoice is to Banks Long & Co and not Burton Waters Management Company and is not a cost for the service charge. Will not pay £3,178.	Invoice for the bus stop, the cost of which has been reimbursed from grants from LLC, WLDC, Burton Parish Council and the Burton Parish Church.	228
248	Page 214 - Invoice from Ace Construction for £996 - why are they cleaning out compost bins - what is the point of composting if it's not to be recycled within the site - the applicant has seen no potholes filled on the track to Bins -the applicant uses regularly and the track is still with potholes - what other quotes were obtained at the time? Will not pay	Ace Construction removed the items with a mechanical digger. Unfortunately, residents keep putting items that are not compostable within the bins.	174

	£996.		
249	Page 220 - Invoice from Lindec for £2,592 - for painting 36 lampposts and Ellison Quay Gates - I have inspected these - they are not painted and which Lamp-posts in which areas were painted? What other quotes were obtained? Disputed £2,592.	Gates are pedestrian gates and they have been done.	229
250	Page 222 - Invoice from T Star to Banks Long & Co for £2,878.08 - this invoice is to Banks Long & Co and not Burton Waters and is not a cost for the service charge. It is noted it is for Burton Waters, where are the actual markings carried out? Will not pay £2,878.08.	Re-lining of 20mph lozenges around site, double yellow lines on Park Lane, Relining 'The Landings' car park.	230
251	Pages 225-228-229-230 - Invoices to G Lidgett for work carried out totalling £950.48 - what other quotes were obtained? Disputed £950.48.	No other quotes as these were all small individual jobs.	271
252	Page 236 -Invoice for insurance from Jelf for fleet commercial, for £3,515.35 -what other quotes obtained and please explain why the same brokers in Hull are always used? Disputed £3,515.35.	See point 237.	244
253	Page 253 - Invoice from Burton Waters Moorings Ltd for £878.38 for Yearly Insurance Charge - evidence of the Insurance, purpose and agreement to pay is required? Disputed £878.38.	Refer to point 207.	255
254	Pages 241 to 250 - Invoices from Soldo Business for a Business Pre-Paid Credit card - why are service charge costs paying £25.20 per month - only two transactions seem to have occurred all year - please provide statements and justify? Disputed.	Refer to point 238.	263

255	Page 253 - Insurance invoice from Burton Waters Moorings, please see earlier comments on this topic - please justify? Disputed £878.38.	Repeat of point 253.	255
256	Page 258 - Invoice from Bluefin for Commercial Combined for £7,953.79 - please provide policy - what other quotes were obtained? Disputed £7,953.79.	Refer to point 52.	244
257	Page 256 - Invoice from Bluefin for Commercial Combined for £8,999.57 - please provide policy - what other quotes were obtained? Why have there been two payments for seemingly same insurance to same firm for same cover within 35 days of each invoice? It is then noted there is a credit at Page 257 - but only for £7,701.79 - there seems to be discrepancy's? Disputed.	Page 255 was the original invoice received. Amendments were made to the policy and pages 256 (invoice) and 257 and 258 (credits) were received for the amendments to the policy.	244
258	Page 259 - Invoice from Phil Gilchrist for £1,788 for digging out grass verge between Marina Studios and Marina Entrance to leave enough room for lorries to swing out re boats entering into the Marina and supplying 74 oak post - this is clearly work carried out for the benefit of the Burton Waters Marina and Burton Waters Mooring Company - why are leaseholders paying for such? Will not pay £1,788.	Actually, this work was carried out to sink posts into the grass verges to stop people parking along this verge and walking along towpath or fishing. It does, in fact, cause problems for lorries delivering boats to BW Marina and has no affect to BW Moorings.	193
259	Page 261 to 265 - Invoices from LRCS for skip Hire - where are the skips used and what alternative quotes were obtained? Disputed £1,100.	Refer to Point 55.	231
260	Pages 271 to 367 - in relation to invoices for landscaping and cleaning toilets are of serious concern in that the following areas of poor accounting, undercharging and lack of correct hours spent as recorded.	Refer to point 56.	146
	a. Beal Homes - Beals have only paid £122.05 from November 2017 through to June 2018 for works carried within the Quays and Marina Court, despite	Refer to point 56.	146

	every month of 2018 the gardening team spending on average 6hrs per week on the Quays area alone carrying out weeding, maintenance, grass cutting and water feature cleaning, every week - however only a few invoices why?		
	b. Burton Waters Moorings only paid £2,779.79 for 225hrs cleaning toilets and landscaping work, painting and cleaning and power washing jetty.	Refer to point 56.	146
	c. Burton Waters Marina Ltd paid £585.84 for 48 hrs	Refer to point 56.	146
	d. Arbor Living paid £210 for Landscaping as seen in the latest 2018 accounts up to June 2018	Refer to point 56.	146
	e. The labour rate charged for Beal Homes/Developments Ltd, Burton Waters Moorings Ltd and Burton Waters Marina Ltd is £9.32 plus 0.85p per hour "Employment costs" {which are not defined} the costs do not include materials used, petrol for the lawnmowers, weed killer, wear and tear or any other cost. The charge per hour is £10.17.	Refer to point 56.	146
	f. Reviewing the invoices Arbor Living paid for the same services provided to the companies above but at a rate of £26.25 per hour, which is a 158.11% difference to the above companies.	Refer to point 56.	146
	g. The national employed contract rate in 2018 as per the Association of National Landscapers contractors rate was £17.50 per hour. This excludes use of any equipment/petrol, pesticides or any other materials used in the course of the work, like gloves, bags.	Refer to point 56.	146
	h. A normal contractors rate including use of equipment and charging for material is £35/40 per hour.	Refer to point 56.	146

	i. Clearly Burton Waters Management has been manifestly undercharging Beal Homes/Developments {Mr Richard Beal and Mr Rik Costall} or indeed charging them at all and Burton Waters Moorings Ltd {Mr Rik Costall} to benefit those directors and their respective companies. The income received from Beal Homes and Burton Waters Moorings and Burton Waters Marina Ltd is wholly and manifestly inadequate and not reasonable.	Refer to point 56.	146
	j. There has been a substantial loss of income to the service charge costs due to charging directors companies substantially much lesser rates.	Refer to point 56.	146
	k. The applicant {after inspecting time sheets of work undertaken} is not convinced, that all the hours have been charged as time sheets are not fully recorded.	Refer to point 56.	146
	l. Notwithstanding the above, it is clear and evident that the rates charged to Beal Developments/Burton Waters Moorings and Burton Waters Marina, do not cover the costs of materials, in essence will not cover overall staff costs per hour and are operating at a loss to benefit these companies.	Refer to point 56.	146
	m. The undercharging needs to be reviewed as it is not reasonable. Disputed.	Refer to point 56.	146
261	There is also a concern that through bad management and wilful and mis/use of staff and service charge income, staff paid for and funded by the service charge are called in on Bank holidays {as evidenced in the time sheets} for Burton Waters Moorings to clean toilets at a loss to Leaseholders within the service charge, but the use of a contractor to de-grit in winter time at considerable expenses {which was a role undertaken by staff in years before end of 2017} that it was considered not	Not at a loss to leaseholders as the staff are paid normal hourly rate on bank holidays. Refer to point 56.	329

	appropriate to ask staff to attend work early, to de-grit roads -there is some severe disparity to prioritise and use of the workforce to benefit Mr Costall's company.		
262	Page 382 - Invoice from Bishop Burton College for £169 to Banks Long & Co - this is not a recoverable item under HMRC rules of taxable allowances as it is not in Burton Waters Management name- what is this for? Will not pay £169.	This is for a course for a member of grounds staff.	183
263	Page 402 - Invoice from DRP Client services - final 50% invoice for gritting - £5,086.82 - during the severe weather of 2018 - the roads within Burton Waters were not gritted, residents had to dig their own way out and grit the road themselves the £10,172.48 - cost has been a blatant waste of monies. Will not pay £10,172.48 which has been paid in full to DRP.	Refer to Point 213. BWM and BW Residents' group approved the cost.	251
264	Page 413 - Invoice from MB Electrical for £354.12 - work is done on a street light within the Quays in March 2018 - why as the Quays have not been handed over at that stage - I see no invoice to Beal Developments - why? Disputed £354.12.	Jan 2018 was handover because that is when we accept that the development finishes and we took over for the repairs. R1 refers to the facts and matters set out in item 13 above.	200
265	Page 414 - Invoice from MB Electrical for £733.22 - it is noted again work is done on a street light within the Quays in March 2018 - why? The Quays have not been handed over at that stage - I see no invoice to Beal Homes - why? Further I see repairs to lights in boater car park - is this not chargeable to Burton Waters Mooring Ltd? Disputed	Jan 2018 was handover because that is when we accept that the development finishes and we took over for the repairs. R1 refers to the facts and matters set out in item 13 above.	200

	£733.22.		
266	Page 415 - Invoice from MB Electrical for £627.70 - please provide the list of lighting repairs as provided by security? £627.70 Disputed.	Refer to Point 45.	175
267	Page 416 - Invoice from Burton Waters Moorings for £620.05 - the service charge funds pay for repairs of street lights - yet this invoice shows a lighting column charge - please explain? Disputed £620.05.	Refer to point 196.	232
268	Page 417 - Invoice from Banks Long & Co for £480 - why are service charge costs paying for this? Disputed £480.	Refer to point 59.	281
269	Page 418 - Invoice from Joanne Costall for £100 for GDPR Training session - who is this session for and why are service charge costs using Joanne Costall - numerous points made within as to merit in using Joanne Costall? Will not pay £100.	Attended by Emma Surphlis on behalf of BWM. Course was also attended by other companies including BLC, BW Marina, BW Moorings and course cost split between all.	300
270	Page 419 - Invoice from Banks Long & Co for £357 for producing Handbooks - why are service charge costs paying extra for this? Will not pay £357.	This is the cost of printing 350 copies of the updated leaseholders' handbook and does not fall within BLC management agreement.	283
271	Page 420 - Invoice from Joanne Costall for £495 - for her own generic GDPR Suite - what is this - what other quotes were obtained - please send a copy of the suite - where is it held - see notes on same topic of using Joanne Costall herein? Will not pay £495.	GDPR suite of documents was purchased by BWM so that it may produce policies and notices.	300
272	Page 421 - Invoice from Joanne Costall for £200 - what other quotes were obtained - why are service charge funds being paid to use a relative of Mr Rik	An analysis is on the invoice. Advice in dealing with complaint by Mr Fernie.	292

	Costall, what qualifications does Joanne Costall have? Will not pay £200.		
273	Page 422 - Invoice from Framework for £422 - what does this relate to in regard to a lighting plan within Burton Waters - please send copy of lighting plan? Disputed £194.68.	This is for producing an up to date lighting and security equipment plan.	171
274	Page 423 - Invoice from Banks Long & Co for £1,062 for debt chasing letters - why is this fee not incorporated in the Management fee? Will not pay £1,062.	Refer to point 62.	278
275	Page 423 - Invoice from Joanne Costall for £675 - what other quotes were obtained - what is SAR of which she was considering? Bespoke Privacy Notice - it is noted Ms Costall deals with matter raised with Mr R Costall, clear conflict impartiality. See notes on same topic of using Joanne Costall herein? Will not pay £675.	We believe this is page 425. Breakdown of invoice is on the letter. Bespoke privacy notice is for employment contracts.	330
276	Pages 426-427 - Invoices from Saul Fair for £4,200 are some £2,000 too expensive for the type of accounts. The applicant can assert this as due to business interests and his current employer the applicant can assert such costs are excessive. Will only pay £2,000.	Saul Fairholm know the site and understand service charge accounts. They have dealt with the apportionments and the VAT calculations on a mixed use site that are more complex.	234
277	Pages 428-430/417 - Invoices from Banks Long & Co for £27,030 - what other quotes obtained - poor value for monies, poor customer services - when was such thoroughly reviewed. Disputed.	See Point 35. Reviewed at 2018 Budget meeting and agreed by BWM and BW residents' group.	278

### Statement of Truth

I believe that the facts contained in the Respondents' Statement of Case are true.  
I am duly authorised by the Respondents to sign this Statement.

Name: .....

Position: .....

**Annex 2**



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

**Case Reference** : **MAN/32UE/LSC/2018/0036**

**Property** : **34 The Quays, Lincoln, Lincolnshire, LN1  
2XG**

**Applicant  
Represented by** : **Mr Joshua Fernie  
Mr Darren Fernie**

**Respondents (1)** : **Burton Waters Management Company  
Limited (Management Company)**  
**(2)** : **Beal Developments Limited (Landlord)**

**Represented by** : **Mr Hardman, Counsel  
Ms Addison, Wilkin Chapman LLP, solicitors**

**Type of  
Application** : **Service charges, Section 27A and 20C of the  
Landlord and Tenant Act 1985. Paragraph 5A  
of Schedule 11 Commonhold and Leasehold  
Reform Act 2002**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA**

**Date** : **3 April 2019**

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**DECISION UPON AN APPLICATION TO STRIKE OUT THE CASE**

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## **The background to the application**

1. This case comes before the Tribunal by way of an application dated 6 May 2018 from the Applicant, Mr Joshua Fernie, the long leaseholder of a terraced house at 34 The Quays, Lincoln, Lincolnshire, LN1 2XG, "the property". The Applicant made it clear in the application that Mr Darren Fernie, who holds financial power of attorney for the Applicant is authorised to act on the Applicants behalf.
2. The application calls into question payability and reasonableness of service charges for service charge years 2015, 2016, 2017 and 2018. An order under Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 is requested. An order under section 20C of the Landlord and Tenant Act 1985 is also requested.
3. The First Respondent is Burton Waters Management Company Limited, the management company. The second Respondent is Beal Developments Limited, the landlord of the property. Both Respondents are represented by Wilkin and Chapman LLP, Solicitors and Mr Hardman of Counsel.
4. Deputy Regional Valuer Walsh issued Directions on 6 July 2018. Direction 5 requires the Applicant's statement of case to be "done by means of a schedule or spreadsheet arranged in date order with separate columns to show (a) each disputed item; (b) the reasons why the item is disputed; (c) the amount (if any) the Applicant is willing to pay; and (d) a space for the Respondent's comments on each item."
5. On 17 August 2018, following an application made by the Applicant the above Directions were amended by a further Direction being made by a Tribunal Judge. " The Respondent should provide the Applicant with facilities to inspect and copy the relevant invoices and receipts for the years in question."
6. On 24 August 2018 the Directions were further amended by a letter being sent to the parties. "The Tribunal notes that the Respondent has now confirmed that facilities to inspect and copy relevant invoices and receipts will be made available to the Applicant and that it is the Applicants intention to have completed this exercise by the end of August 2018. The Tribunal accordingly order(s) the Applicant to submit an amended statement of case, which must comply with Direction 5, by 21 September 2018."
7. On 15 October 2018 the Applicant served his amended statement of case (served late) and it is not set out in accordance with Direction 5, in that although it could be described as a schedule it is not in columns. Where

- the Applicant has indicated how much he would be prepared to pay it is consistently indicated as the whole amount is in issue.
8. On 30 October 2018 both Respondents served a joint application that the cases against them should be struck out.
  9. On 13 November 2018 the Applicant served a response to that application.
  10. On 3 April 2019 the case in relation to the application to strike out was heard at Lincoln County Court, Tribunal Room 2. This being a preliminary hearing there was no need to inspect the property before the hearing.

## THE LAW

### Landlord and Tenant Act 1985

#### Section 18, meaning of service charge and relevant costs.

Briefly this defines a service charge and associated costs as the variable cost of providing the service.

#### 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.

#### Section 19, Limitation of service charges: reasonableness.

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
  - (a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

### The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Overriding objective and parties' obligation to co-operate with the Tribunal

Rule 3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

Failure to comply with rules, practice directions or Tribunal directions

Rule 8.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 9 (striking out a party's case);
- (d) exercising its power under paragraph (5); or
- (e) barring or restricting a party's participation in the proceedings.

#### Striking out a party's case

Rule 9.—(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

- (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
- (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;
- (d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
- (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

### **Relevant provisions of the lease in respect of the application to strike out**

- 11. Page 1 of the lease, prescribed information clauses, Parties to the lease, LR3. The Landlord is stated to be Beal Developments Limited and The management company is stated to be Burton Waters Management Company Limited.
- 12. Page 4 of the lease, Beal Developments Limited is stated to be the lessor and Burton Waters Management Company Limited is stated to be the management company.
- 13. Page 7 of the lease, at clause 5.2, it states that if the management company shall default in respect of any of its obligations to the lessee (the Applicant) the lessor shall itself comply with such obligations in substitution for the management company.

### **Written case on behalf of the Respondents in respect of the application to strike out**

- 14. The Respondents' apply for either mandatory strike outs or discretionary strike outs of the cases against both Respondents, in the alternative they request variations to the Directions already made in the case.
- 15. The First Respondent's case is that the Applicant's statement of case of 15 October 2018 does not comply with Direction 5 of the Directions of 6 July 2018. The amended statement of case (served late) still does not comply with Direction 5 and the Respondent contends that the statement of case fails to make out a case that the Tribunal has jurisdiction to hear and as such should be struck out. It fails to identify what the dispute is or what the Applicant is willing (if anything) to pay with each disputed item.

16. The Second Respondent repeats and joins the First Respondent in his application. In addition the second Respondent states that he is a house builder, who is not the landlord or freeholder of the property and is not party to the lease. It has no control of or dealings with the service charge. As such, in addition to the matters relied upon by the First Respondent, the case against him should be struck out.

### **Written case on behalf of the Applicant in respect of the application to strike out**

17. The Applicant's reply to the application to strike out his claim is that although the first statement of case did not comply with Direction 5, the amended statement of case does. It is a schedule organised in year order and makes clear reference to invoices that are identified by reference to accounts pages. The cause of action being whether or not the service charge costs have been reasonably incurred.
18. Further, the Applicant states that his lease makes it clear that the Second Respondent is his Landlord. His case is that both Respondents' have a case to answer.

### **The hearing**

19. The hearing commenced at 11am on 3 April 2019. Darren Fernie being present on behalf of the Applicant. The Applicant had missed his flight to England in returning from Vietnam and was therefore not in attendance. The Tribunal having regard to the information contained in paragraph 1. above decided to permit Daren Fernie to represent the interests of the Applicant.
20. Present on behalf of the Respondents was Mr Hazel who works on a voluntary basis for the Second Respondent whose sole Director is Mr Costell, who is Mr Hazel's father in law. The Tribunal was informed that Mr Costell has given permission for Mr Hazel to represent the Respondents. Mr Hardman of Counsel and a representative of his instructing solicitors Ms Addison, were also present.
21. Mr Hardman, on behalf of the Respondents, agreed that the Second Respondent was, subject to the terms of the lease, at all material times the landlord of the Applicant. Even so he sought to persuade the Tribunal that there was no realistic prospect of any order being made against the Second Respondent in this case, being that the Second Respondent has nothing at all to do with the service charges in this case. Having said that, Mr Hardman contended that it had been agreed between the Respondents that the Second Respondent would be responsible for half of the costs in the case and it was unfair to keep the Second Respondent in the case in

these circumstances. As such the case against him should be struck out whether or not the case against the First Respondent was struck out.

22. More generally, Mr Hardman submitted that there have been three breaches of Direction 5 by the Applicant. The first was that the statement of case served on 15 October 2018 does not comply with Direction 5, in there being a total failure to comply with the Direction. The second is that the time limit set for service of the statement of case of 21 September 2018 was not met. It was served late, although conceding that this of its self was not so vital a breach.
23. The third breach is that the statement of case now being relied upon does not comply with Direction 5. It is accepted as a schedule, but it is not in columns, it fails to state against each disputed item the reason for the dispute and it fails to state what (if anything) the applicant is willing to pay in relation to that item, always contending that the Applicant is not willing to pay anything. Mr Hardman submitted that this is a fundamental breach of Direction 5 in that it requires the Respondent to not only serve the invoice, but also then to prove that the expenditure was reasonable, when normally production of the invoice would suffice as evidence that the cost was reasonable, because that is what the Respondent had to pay for the service in question.
24. Mr Hardman also took issue with several items in dispute that request that the Respondent produce proof that the invoice has been paid, this putting the Respondent to the added burden of having to produce bank statements. Mr Hardman also took issue with the Applicant asking the Respondents to produce quotes that may have been obtained by the management agent in relation to work done.
25. Mr Fernie submitted that the Second Respondent is his sons Landlord (this now being agreed) and as such should remain a respondent in the case, relying on clause 5.2 of the lease.
26. A summary of Mr Fernie's submissions are that the area in which the property is situated has several companies active, including the two Respondents and that they have the same Directors so that it is necessary, in his view, for the Respondents to make it clear that any service charge cost is properly payable under the terms of the lease and should not have been by another company situated in that area. There are many invoices that are challenged that suggest that another company should have paid it. Further, he informed the Tribunal that there is a complicating factor in that whilst an area is under development, costs that might otherwise be service charge costs are development costs and only become chargeable as service charges when the area has been "handed over" after development has been completed. It is therefore important to know when the site containing the property was "handed over".

27. Mr Fernie submitted that the Applicant knew that the first statement of case was such that it did not comply with Direction 5, but that it would not be able to comply because the Applicant did not have sufficient information to be able to comply. Further, he submitted that it had been necessary for the Applicant to apply for the order made on 17 August 2018, to make it possible for the Applicant to comply with Direction 5.
28. Mr Fernie produced the result of an email search with the H. M. C. T. S. web site seeking guidance as to how to set out a schedule in the manner described in Direction 5 and the search provided no guidance at all. The Applicant had found a copy of a statement of claim and had done his best to follow that as a guide. The Applicant had done his best to follow that guide, amending it to suit the needs of the case. The Respondents have been provided with a "word" email copy of the amended statement of case and it will therefore be easy for the Respondents to utilise that statement of case as the basis for their own statement of case, typing in their comments in the appropriate place.
29. Mr Fernie submitted that some of the invoices do not make it clear where work was done or for whom it was done. The Applicant has however been told that the management agent is in the practice of obtaining quotes to expensive items of work. The Applicant therefore requests such quotes as exist to be produced as they may establish where the work was done and for which company.

## **The deliberations**

30. The Tribunal determines that the Second Respondent is the Landlord of the Applicant and accepts the submissions made on behalf of the Applicant that the landlord should remain a respondent in the case. The Second Respondent would be subject to an order under section 20C of the Landlord and Tenant Act 1985, if any such order is made and clause 5.2 of the lease makes the Second Respondent potentially liable if the First Respondent should default. It is fair and just to come to this decision. (The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.)
31. The Tribunal having considered the written evidence and oral submissions in this case determines that it will not strike out the case against the Respondents for failure to comply with Direction 5. The reasons for this decision are as follow.
32. It is fair and just to come to this decision. ( Rule 3, The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).
33. The Tribunal accepts the submissions made on behalf of the Applicant that the Applicant could not properly comply with direction 5 in submitting the

- Applicant's first statement of case, because there was insufficient information available to the Applicant.
34. The Respondents do not take the failure to meet the time limit imposed as a serious breach of the amended Direction and the Tribunal agrees with the Respondents that this is a fair approach to take.
  35. The Tribunal decides that the Applicants statement of case does raise issues that the Tribunal has jurisdiction to decide upon, namely whether or not the service charges in question can be charged as service charge costs under the lease and whether or not they are reasonable.
  36. The Tribunal accepts the submissions made on behalf of the Applicant that where there are numerous companies active in the same area with similar management, it is possible that honest mistakes could be made as to who should pay for what. In these circumstances it is reasonable to establish payability under the terms of the lease.
  37. The Tribunal accepts the submissions on behalf of the Applicant that production of any quotes that the management agent already has in its possession might help all parties in the final determination of this case. It is reasonable for the Applicant to ask that such documents already in the possession of the management agent be produced in evidence.
  38. The Tribunal waives the breaches of Direction 5, as discussed above. (Rule 8(2)(a) The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.)
  39. Mr Hazel expressed discomfort that there is a suggestion of improper behaviour made in the Applicants statement of case. The Tribunal wishes to make it very clear that the Tribunal does not have jurisdiction to consider improper behaviour. It approaches the case on the understanding that all witnesses and parties are being honest with each other and the Tribunal. The Tribunal will only consider whether or not a service charge cost is payable under the terms of the lease and whether the cost is reasonable.
  40. Issues as to costs will be considered at the end of the final hearing.

## **The Decision**

41. The Tribunal decides that it will not strike out any part of this case and that it waives the breaches of Directions by the Applicant in this case.
42. Issues as to costs will be reserved until the end of the final hearing.

43. This is not a final determination of the case. There are therefore no statutory rights of appeal against this decision.

Judge Tonge

**Annex 3**



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

**Case Reference** : **MAN/32UE/LSC/2018/0036**

**Property** : **34 The Quays, Lincoln, Lincolnshire, LN1  
2XG**

**Applicant  
Represented by** : **Mr Joshua Fernie  
Mr Darren Fernie**

**Respondents (1)** : **Burton Waters Management Company  
Limited (Management Company)**  
**(2)** : **Beal Developments Limited (Landlord)**

**Represented by** : **Mr Holt, Wilkin Chapman LLP, solicitors**

**Type of  
Application** : **Service charges, Section 27A and 20C of the  
Landlord and Tenant Act 1985. Paragraph 5A  
of Schedule 11 Commonhold and Leasehold  
Reform Act 2002**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA**

**Date** : **6 February 2020**

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**DECISION UPON THE SECOND APPLICATION TO STRIKE OUT THE  
CASE, TO SET ASSIDE A DECISION TO ADJOURN A HEARING DATE  
AND FOR FURTHER DISCLOSURE**

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## **The background to the application**

1. This case comes before the Tribunal by way of an application dated 6 May 2018 from the Applicant, Mr Joshua Fernie, the long leaseholder of a terraced house at 34 The Quays, Lincoln, Lincolnshire, LN1 2XG, "the property". The Applicant made it clear in the application that Mr Darren Fernie, who holds financial power of attorney for the Applicant is authorised to act on the Applicants behalf.
2. The application calls into question payability and reasonableness of service charges for service charge years 2015, 2016, 2017 and 2018. An order under Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 is requested. An order under section 20C of the Landlord and Tenant Act 1985 is also requested.
3. The First Respondent is Burton Waters Management Company Limited, the management company. The second Respondent is Beal Developments Limited, the landlord of the property. Both Respondents are represented by Wilkin and Chapman LLP, Solicitors.
4. Deputy Regional Valuer Walsh issued Directions on 6 July 2018. On 17 August 2018, following an application made by the Applicant the above Directions were amended. On 24 August 2018 the Directions were further amended.
5. On 30 October 2018 both Respondents served a joint application that the cases against them should be struck out (the first such application).
6. On 3 April 2019 the case in relation to the application to strike out the application was heard in a case management hearing at Lincoln County Court, Judge Tonge sitting alone. The Tribunal declined to strike out the Applicant's case, issuing a Decision to that effect and additional Directions. Those Directions were amended on 14 July 2019.
7. The Tribunal has been informed that hearing bundles have now been prepared and the final hearing of this matter was due to commence at Nottingham on 3 February 2019, with a time estimate of five days.
8. On 23 December 2019 the tribunal office was made aware that the Applicant in this case was not available to attend this hearing date, being out of the country in Asia and an application was made on that basis by Mr Darren Fernie for the hearing date to be vacated.
9. This application to vacate the hearing date was agreed to by Judge Tonge on 3 January 2020, deciding that it would be unfair and unjust to hear this complicated case in the absence of the Applicant. However, due to the age

of the case Judge Tonge indicated that "this case must be brought to a conclusion so that once fixed again, the tribunal will be highly unlikely to agree to yet another adjournment". This decision necessitated dates to avoid being obtained to re list the hearing date. It appears to be the case that there was some delay in notifying the Respondents of this fact.

10. As a result of the trial date being adjourned, on 28 January 2020, the Respondents served upon the tribunal office an application (1) to seek an order to have the Tribunal set aside the decision to vacate the trial and reinstate the trial as previously listed to commence 3 February 2020 (2) to strike out the Applicant's case as being an abuse of process (3) for disclosure of the power of attorney referred to by Darren Fernie over the affairs of the Applicant.
11. On 29 January 2020, Mr Darren Fernie objected to the Respondents application and asked for time to further respond to the Respondents application. Both the application and request for time were put before Judge Tonge who decided to grant Mr Fernie until 4pm on 5 February 2020 to make further representations. No further representations have been made.
12. On 6 February 2020, the Tribunal, Judge Tonge sitting alone, considered the merits of the application.

### **Determination of the issues**

13. The first issue raised is to seek an order to have the Tribunal set aside the decision to vacate the trial and reinstate the trial as previously listed to commence 3 February 2020.
14. The Tribunal notes the representations made by both parties, but does not agree with the Respondent that there has been a breach of Rule 7(7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S. I. 2013/1169) "the Rules". That rule deals with the making of a Direction. In this case there have been numerous Directions, referred to above. These Directions have brought the case to a state of readiness for the final hearing. The listing of the case is an administrative matter, undertaken after consulting all those involved, including the court that is to accommodate the hearing. This case was given a date for the case to commence. As a matter of fairness to the Applicant, that date had to be changed. As a matter of practicality, the hearing could not now commence on the listed date. The hearing will take place in due course. There has been no prejudice caused to either party.
15. The Tribunal will not set aside the decision to vacate the trial dates. New trial dates, with an estimated duration of five days, will be notified to the parties when fixed.

16. The second issue raised is for the Tribunal to make an order to strike out the Applicant's case as being an abuse of process.
17. The Tribunal notes the representations made by both parties. The Tribunal does not agree with the Respondents' assertion that Mr Fernie's application, seeking to ensure that the Applicant can attend the hearing of this case is an abuse of the process. The Tribunal agreed to vacate the trial date and relist it because the overriding objective of fairness and justice dictate that this was the only proper course of action open it (rule 3 of the Rules). The Tribunal will not strike out the Applicant's case.
18. The third issue raised is for disclosure of the power of attorney referred to by Darren Fernie over the affairs of the Applicant.
19. Directions have been issued on 6 July 2019 (amended twice) and 3 April 2019 (amended once). The case is now ready for trial and as such a further Direction to disclose the power of attorney will not assist the parties to prepare for the final hearing. The trial has been adjourned to permit the Applicant to appear at the trial himself and as such Mr Fernie will not be seeking to rely upon his power of attorney. The Tribunal will not make the further Direction now being sought.
20. However, in the event that the Applicant is not present at the final hearing then the Respondents will be at liberty to challenge Mr Darren Fernie's right to act on behalf of the Applicant, in the Applicant's absence. Rule 14 (1) and (2) deal with this (the Rules). In the event that this were to happen, the Applicant must have delivered to the Tribunal and the other parties a written notice indicating that Mr Darren Fernie is so authorised to act, this including Mr D. Fernie's home address. The Tribunal would further require that this authority be signed by the Applicant and be delivered at least 7 days before the trial is to commence. Failure to comply with this Direction will be taken into account by the Tribunal in deciding whether or not to strike out the Applicant's case at that point.

## **The Decision**

21. The Tribunal decides that it will not set aside its decision to vacate the trial date, will not strike out any part of this case, but will order disclosure as required in paragraph 20, above.
22. This is not a final determination of the case. There are therefore no statutory rights of appeal against this decision.

Judge Tonge



**Annex 4, Directions of 22 December 2020**  
**FIRST-TIER TRIBUNAL**  
**PROPERTY CHAMBER**  
**(RESIDENTIAL PROPERTY)**

**Case Reference** : **MAN/32UE/LSC/2018/0036**

**Property** : **34 The Quays, Lincoln, Lincolnshire, LN1  
2XG**

**Applicant** : **Mr Joshua Fernie**  
**Represented by** : **Mr Darren Fernie**

**Respondents (1)** : **Burton Waters Management Company  
Limited (Management Company)**  
**(2)** : **Beal Developments Limited (Landlord)**

**Represented by** : **Wilkin Chapman LLP, solicitors**

**Type of** : **Service charges, Section 27A and 20C of the**  
**Application** : **Landlord and Tenant Act 1985. Paragraph 5A  
of Schedule 11 Commonhold and Leasehold  
Reform Act 2002**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA**

**Date** : **22 December 2020**

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**DIRECTIONS OF 22 DECEMBER 2020**

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## **Background to these Directions**

1. This case had been re-listed for its final hearing to be held between 7 September 2020 and 11 September 2020, on the basis of it being a full hearing in a tribunal hearing room. As the date fixed for the hearing grew closer the Tribunal received notification that due to Covid 19 restrictions it was not possible for the hearing to go ahead in that format.
2. The Tribunal members were provided with the hearing bundles to prepare for the final hearing and whilst that was underway they were informed that the hearing could no longer take place in a hearing room. Bearing in mind that the Parties and witnesses were all available for the hearing dates, the Tribunal considered whether the hearing as planned could be dealt with in some other format. Having considered the content of the evidential bundles the Tribunal decided that the case is in fact suitable for a hearing via the full video hearing platform. This would still permit cross examination of witnesses, if a Party thought this necessary. The Tribunal commenced to organise this alternative method of hearing the case. However, the Applicant indicated that he was not able to take part in such a hearing because of the lack of band width and suitable computer equipment.
3. The Respondents' offered to assist the Applicant to resolve these issues in that they would provide the Applicant with a room with the required band width and a computer capable of linking into the full video hearing. However, the Applicant made it clear that he would not accept any assistance from the Respondents' to resolve these technical issues and that only a hearing with the Parties and witnesses in a tribunal room would be acceptable to the Applicant. The hearing was adjourned, whilst the Tribunal considered the options available to hear the case in a way that best accords with the wishes of the Applicant, but that is possible under the Covid-19 restrictions. It has now been decided that this case can be heard as a hybrid hearing.
4. Directions, dated 16 November 2020, were issued with a view to re-listing this case for its final hybrid hearing, sitting at the Tribunal's own hearing rooms in Manchester. It has been made clear by the Applicant that he objects to such a hearing taking place, still requiring a full hearing in a tribunal room. However, that is not possible at present. The Tribunal has no way of knowing whether such a hearing will be possible in the near future, if at all.
5. It has also been made clear by the Applicant that he objects to the Tribunal sitting in Manchester, but when enquiries were made as to the availability of a hearing room that could fulfil the requirements as decided upon by the Tribunal for a hybrid hearing to take place, the Tribunal was not offered a hearing room closer to Lincoln than Manchester.

6. It has subsequently been necessary to issue further Directions, dated 7 December 2020. These two sets of Directions set out the background to those Directions in more detail. There is no need to repeat that here.
7. The Directions of 7 December 2020 provided an opportunity for the Respondent's to consider an application made by the Applicant for disclosure as referred to in the Applicant's "Response to Directions issued on 16 November 2020", paragraphs 6 and 7.
8. The Tribunal notes that it was clear that the Applicant's email "Response to Directions issued on 16 November 2020" had only been sent to the Tribunal, it had not been sent to the Respondents and was therefore in breach of the Directions issued by Deputy Regional Valuer Walsh, Direction 11, issued on 6 July 2018. It was therefore necessary for the new Directions of 7 December 2020 (Direction 1) to require that the Applicant's email "Response to Directions issued on 16 November 2020" be sent to the Respondents. The Respondents have supplied a response, dated 16 December 2020.
9. The Applicant had sent an email to the tribunal office on 14 September 2020, an attachment to which deals with 17 witnesses that the Applicant wanted to attend the then already vacated hearing that had been due to commence on 7 September 2020. On 10 December 2020, an email was sent to the Applicant at the request of Judge Tonge. The purpose of that email was to explain to the unrepresented Applicant the circumstances in which a witness in a Residential Property Tribunal case can be required to give evidence orally, during a hearing. That email requested information to help identify the witness statements of these 17 witnesses that the Applicant referred to in the 11 lever arch files that the two hearing bundles contain. That information has not been provided.
10. The Applicant has served a document entitled "Re Response to Tribunal Directions of 7 December 2020 and email dated 10 December 2020". Again, it is clear that this has been sent to the Tribunal, but not to the Respondents in breach of the Directions issued by Deputy Regional Valuer Walsh, Direction 11, issued on 6 July 2018. The Tribunal will therefore Direct that this document be served upon the Respondents.
11. In that document the Applicant seeks to raise a complaint that the Tribunal has failed to protect the Applicant and his witnesses from intimidation in contempt of the Tribunal proceedings (paragraph 1 of the document). The Tribunal has already explained to the Parties when and in what circumstances the Tribunal can deal with a contempt of its proceedings. The allegations of intimidation being raised by the Applicant are of conduct that is outside the jurisdiction of this Tribunal to deal with. If such conduct occurs the Parties have to rely upon the Police to deal with

- them. It is entirely wrong for the Applicant to accuse the Tribunal of failing to act in circumstances where the Tribunal has no jurisdiction to act, especially so when the Applicant has already been given advice on the point (Directions of 7 December 2020, paragraph 10).
12. The Applicant (paragraph 2 of the document) points out that hotel accommodation may not be available in Manchester because of Covid-19 restrictions. The Tribunal points out that all persons attending the hybrid hearing tribunal room will either have to travel substantial distances to and from the hearing on a daily basis or obtain hotel accommodation, including the members of the Tribunal. The Parties should note that attendance at a tribunal hearing is an exception to the normal Covid 19 restrictions and hotel accommodation would at present be available to be purchased in a tier 3 Covid restricted area. Attendance at a tribunal hearing is also an exception to any Covid 19 restriction upon travel. The tribunal administration will continue to monitor the situation.
  13. The Applicant seeks to object to the case proceeding without an inspection of the area in which the property is situated (paragraph 3 of the document). The Tribunal agreed to make an inspection of the area at the Case Management Hearing held on 3 April 2019, at a time well before the Covid 19 pandemic had commenced. The inspection being scheduled to last one hour.
  14. The members of the Tribunal did not see the hearing bundles until it was time to prepare for the full hearing, at which time the Tribunal members were able to make a determination that the Tribunal did not need to inspect the area because the evidence in those bundles (including the detailed plan of the area) are such the Tribunal would not be assisted by an inspection. Even so, the Tribunal granted liberty for either party to provide additional evidence in the form of photographs of the area if either party thought that to be necessary. Originally, in the Directions of 16 November 2020, a time limit was set for this additional evidence to be served by 2 December 2020, extended at the Applicant's request to 21 December 2020. It is entirely wrong for the Applicant to claim that he cannot have a fair hearing in the absence of an inspection in these circumstances.
  15. The Applicant seeks to complain about the advice given to him relating to witnesses (paragraph 4 and 7 of the document), whilst at the same time failing to assisting the Tribunal by providing the information requested by the Tribunal in the email of 10 December 2020. Further, the Applicant reminds the Tribunal that he has applied for 16 witness summonses at some point in the past (identified by the Tribunal as being in an email, dated 5 July 2019).
  16. The Tribunal dealt with this request for witness summonses in Directions, dated 14 July 2019, refusing to grant the witness summonses as there was

no good reason to make such an imposition upon those persons (Directions of 14 July 2019, paragraphs 7, 9 and 11). The Tribunal does not understand why the Applicant wishes to refer back to this, but has checked the list of 16 names for whom witness summonses were sought in July 2019, only 5 of these potential witnesses are repeated in the list of 17 witnesses that the Applicant seeks to have attend the hearing. The Tribunal has checked its records and can find no other application for witness summonses. The Tribunal having given advice in the email of 10 December 2020, takes no further action relating to this point. A witness summons will not be issued without a compelling reason for this to be done.

17. The Applicant seeks to make a point clear (paragraph 6 of the document), but in doing so entirely misrepresents what happened in the run up to the hearing listed for 7 September 2020. The facts are accurately stated above and have been repeated here to make it clear what happened in the run up to the last adjourned hearing date. It is entirely wrong for the Applicant to misrepresent facts in this way.
18. The Tribunal reprints here 2 parts of the Applicant's response, dated 3 September 2020, to the offer by the Respondents to provide a room with band width and an appropriate computer, so that the video hearing proposed by the Tribunal could go ahead. "The applicant nor his father will use any equipment provided by the respondents, nor will we use any room paid for by the respondents as we have stated, such is exercising pressure to comply with a hearing they want, which we simply do not agree to, using a room paid for by whoever, as the client is not identified in Mr Holts email. We have made our position perfectly clear." "Secondly, "A face to face hearing in open court is essential as is a site inspection". The email from the Applicant was very clear, the Applicant refused to take part in the video hearing.

### **Determination as to issues relating to disclosure**

19. The Applicant seeks disclosure of bank statements (paragraph 6 of the document of 25 November 2020). The Respondents' object on the basis that the statements are confidential and will not assist the Tribunal in deciding whether the lease permits any service charge to be demanded or the reasonableness of such a charge. Further, the Applicant includes as an attachment to the document "Re Response to Tribunal Directions of 7 December 2020 and email dated 10 December 2020" an email from the Respondents' to a Charles Boyd that suggests that in a case involving Mr Boyd the Respondents' are willing to produce the bank statements in issue, calling into question the suggestion that the bank statements contain confidential information.

20. The Tribunal will adjourn this issue to be heard as a preliminary issue at the final hearing of this case. The Respondents', must bring with them to that hearing copies of the bank statements in question in an un-redacted and a redacted form. The Tribunal is led to believe that both Parties are fully aware of the bank statements involved, if that is not the case the Respondents must ask for clarification from the Applicant by 4pm, 8 January 2021. If such a request is made, the Applicant must respond, making it clear which bank statements are at issue, to the Respondents' solicitors by 4pm, 15 January 2021. All such communication may be by email.
21. The Applicant seeks disclosure as to development-wide apportionment of service charges (paragraph 7 (a) of the document of 25 November 2020). The Respondents' contend that this has already been done. The Tribunal will make no order as to disclosure at this stage, but is prepared to hear submissions as a preliminary point at the final hearing if the Applicant seeks to continue with the issue.
22. The Applicant seeks disclosure as to the timing of handover of parts of the development (paragraph 7 (b) of the document of 25 November 2020). The Applicant contends that service charges can only be charged after the part of the development concerned has been handed over. The Respondents' contend that the lease makes it clear what service charges can be charged, without hand over making any difference. The Tribunal will make no order as to disclosure at this stage, but is prepared to hear submissions as a preliminary point at the final hearing if the Applicant seeks to continue with the issue.
23. The Applicant seeks disclosure of cross guarantee agreements relating to the development (paragraph 7 (c) of the document of 25 November 2020). The Respondents' point out that the Applicant has not stated why this could assist the Tribunal in deciding whether the lease permits any service charge to be demanded or the reasonableness of such a charge. The Tribunal will make no order as to disclosure at this stage, but is prepared to hear submissions as a preliminary point at the final hearing if the Applicant seeks to continue with the issue.
24. The Applicant seeks disclosure of any lease of property relating to the development to which the second Respondent is a party, extending this to two other companies that are not a Party to this case (paragraph 7 (d) of the document of 25 November 2020). The Respondents' submit that the Applicant has failed to state why this is needed. The Tribunal has grave doubts as to whether there could ever be good reason to require a third party to disclose such information. The Tribunal will make no order as to disclosure at this stage, but is prepared to hear submissions as a preliminary point at the final hearing if the Applicant seeks to continue with the issue.

25. The Applicant seeks disclosure of details of individual lessees who have been promised membership or shareholding with the first Respondent (paragraph 7 (e) of the document of 25 November 2020). The Respondents' submit that the Applicant has failed to state why this is needed. The Tribunal agrees with the Respondents' and can see no conceivable way in which this could assist the Tribunal in deciding what is a service charge that can be charged under the terms of the lease and whether or not such a charge is demanded at a reasonable level. This part of the application for disclosure is refused.
26. The Applicant seeks disclosure of details of instructions/ work completed/ drafted by James Hazel (paragraph 7 (f) of the document of 25 November 2020). The Respondents' submit that the Applicant has not made it clear as to how such information could assist the Tribunal in deciding the issues in this case. The Tribunal agrees with the Respondents' and can see no conceivable way in which this could assist the Tribunal in deciding what is a service charge that can be charged under the terms of the lease and whether or not such a charge is demanded at a reasonable level. This part of the application for disclosure is refused.
27. The Tribunal notes that the Applicant contends that it would be unfair to continue with the Tribunal's plan to deal with this case as a hybrid hearing sitting at Manchester. The Tribunal does not agree with the Applicant. This case has been pending for a very long time and it is in everyone's best interest that this case be finalised as soon as possible. The Tribunal will continue to list this case for a hearing in the tribunal hearing room in Manchester.

## **FURTHER DIRECTIONS**

1. The tribunal office will copy to the Respondents' solicitor, Wilkin Chapman Solicitors and (if so required by those solicitors) to the offices of the Respondent companies the email that the Tribunal has received from the Applicant, entitled "Re Response to Tribunal Directions of 7 December 2020 and email dated 10 December 2020", together with attachments. This to be sent by email as soon as is reasonably practicable and the Tribunal will record the date that this is done.
2. The Parties and the Applicant in particular are hereby required to obey Direction 11 of the Directions issued by Deputy Regional Valuer Walsh, on 6 July 2018, that "No documents, letters or emails may be sent to the Tribunal unless also sent to the other Party to these proceedings. Confirmation that this has been done must clearly be marked on all correspondence." To ensure that this is complied with the Parties must take note that if that Direction is not complied with this Tribunal will not

deal with the documents, letters or email that has been sent in breach of the Direction.

3. The Applicant has requested disclosure of bank accounts, see paragraphs 19 and 20 above. The Tribunal is led to believe that both Parties are fully aware of the bank statements involved, if that is not the case the Respondents must ask for clarification from the Applicant by 4pm, 8 January 2021. If such a request is made, the Applicant must respond, making it clear which bank statements are at issue, to the Respondents' solicitors by 4pm, 15 January 2021. All such communication may be by email.
4. The Parties must supply dates to avoid for the months of February, March and April 2021, together with a list of persons who have already given witness statements in these proceedings and whom they wish to cross examine (challenge parts of those witness statements) at the hearing by 4pm, 8 January 2021. This may be done by email to the tribunal office.
5. Any Party wishing to object to these Directions must do so in writing, by email to the tribunal office, within 7 days of the Directions being sent to them by email. Such objection may be by email and must contain reasons for the objection.

**FAILURE TO COMPLY WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN DETRIMENT TO A PARTIES CASE. FOR EXAMPLE, IT MAY LEAD TO THE TRIBUNAL REFUSING TO HEAR LATE EVIDENCE; TO A PARTIES CASE BEING STRUCK OUT; AND/OR TO AN ORDER FOR COSTS BEING MADE.**

Judge Tonge

Sent to the Parties via email on ...