FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2020/0067V:CVP**
Property	**:**	**46, Auriol Road, London, W14 0SR**
Applicant	**:**	**Ms D Becher**
Respondent	**:**	**Mr A McKeer**
Type of application	**:**	**Reasonability and payability of service charges, pursuant to section 27A of the Landlord and Tenant Act 1985.**
Tribunal	**:**	**Ms H C Bowers BSc MSc MRICS** **Mr S Johnson MRICS** **Ms L West**
Date of Hearing	**:**	**24 June 2021**
Date of Decision	**:**	**21 October 2021**

DECISION & REASONS

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraphs 82,84 and Appendix 2 of our Decision dated 21 October 2021. Our amendments are made in bold and shown in red. We have corrected our original Decision because of slight mathematical errors

Signed: Ms H C Bowers **Dated: 26 January 2021**

Remote Hearing Arrangements:

(A) This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVP. A face-to-face hearing was not held because it was not practicable, and no request was made for a face-to-face

hearing. The documents that the Tribunal was referred to were in a bundle of 881 pages, plus an additional five pages provided by the Applicant.

(B) All documents have been noted by the Tribunal. Numbers in bold and in square brackets in the reasons below refer to pages in the hearing bundle.

(C) The remote video hearing took place on 24 June 2021. In attendance were the Applicant, Ms Becher and the Respondent, Mr McKeer. Also in attendance, as an observer, was Mr El Sadek, the leaseholder of the Upper Ground Floor Flat.

DECISION

For the reasons given below, the Tribunal finds as follows:

- **The service charges that are payable by the Applicant are set out in Appendix 2 to these Reasons.**
- **The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, that any costs incurred as part of this application are not to be treated as 'relevant costs' for future service charge years.**
- **The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, that the Applicant's liability for any administration charge in respect of litigation costs is extinguished.**
- **The Tribunal makes an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that Mr McKeer is to reimburse Ms Becher the application fee of £100 and the hearing fee of £200.**

REASONS

The Application

(1) The Applicant made an application, received on 4 February 2020, under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) for a determination of the reasonableness of service charges for various issues in the service charge years ending 31 December 2017, 31 December 2018 and 31 December 2019. Included in the main application was an application for an order under section 20C of the 1985 Act and an order under paragraph 5A to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The Tribunal issued various Directions that set out the steps that the parties had to take to prepare for the hearing. As part of those Directions, the Applicant was permitted to include service charge items and Legal Fees claimed

from her in the 2020 service charge year, being items incurred during Mr McKeer's period of management.

The Background

(2) The Tribunal has some knowledge of the subject property due to previous applications. In a previous case (LON/00AN/LAM/2016/0031), Mr McKeer was appointed the manager of 46, Auriol Road, London, W14 0SR (the subject property) under the provisions of section 24 of the Landlord and Tenant Act 1987 (the 1987 Act). The appointment was for a period of five years from 27 January 2017 and was due to expire on 26 January 2022 and was subject to the terms of a Management Order attached to the Tribunal's decision.

(3) Under a further application (LON/00AN/LVM/2019/0018) the Tribunal varied the Management Order and substituted Mr Martin Kingsley as the manager with effect from 1 April 2020. As such Mr McKeer's period of appointment ceased on 31 March 2020.

(4) From the decision in the previous case (LON/00AN/LVM/2019/0018), the property is described as follows:

> "*10. The Tribunal made an inspection of the subject property on the morning of 4 February 2020, prior to the hearing. The subject property is a large detached house on four floors (lower ground floor to second floor). The property has been divided into four flats, Garden Flat, Ground Floor Flat, First Floor Flat and Second Floor Flat. The front boundary is a low brick wall with two brick pillars on either side of a short flight of stairs leading to the front door. There is a covered porch to the front door. There is an entry phone system by the front door and a key fob mechanism. The front door gives access to a small outer hall area and then another door gives access to a small inner hallway. The outer hallway has a radiator and this appears to be supplied from the central heating system installed in the Ground Floor Flat. There is also a meter cupboard for the electrics in the Ground, First and Second floor flats. The inner hallway is small and is carpeted with an electric light on a timer switch. This hallway gives access to the stairs serving the First and Second Floor Flats via a sliding doorway and to the Ground Floor Flat. It was noted that the door to the Ground Floor Flat has an eyehole and an entry phone system with a video camera arrangement.*
>
> *11. Externally the Tribunal observed a small area to the side of the main stairs where bins were stored, there was also an outside tap in this area. Beneath the stairs is a vault area that is demised to the Garden Flat. This is used for storage but it was observed that there was a stopcock/tap that was labelled for the First Floor Flat. There was also a boxed, cupboard area and although it was not possible to open at the inspection, a photograph was brought to the hearing to show that this housed the electrical intake. This was undisputed by the parties.*
>
> *12. The Tribunal also observed other garden areas to the front, sides and rear of the property that were demised to the Garden and Ground Floor*

Flats. There is also a garage to the side of the property (right hand side when observing the property from the front) that is demised to the Ground Floor Flat. The whole of the side and rear boundaries were walled. The wall between the subject property and an adjacent property on Edith Road shows some indication of previous movement but there is evidence of some pointing work carried out to the wall.

13. In general, the property is well maintained and the decorative condition is sound. Mr El-Sadek asked the Tribunal to observe the condition of the external brickwork. Whilst it is noted that this has not been repointed recently, there is no indication that this is causing any problems to the property."

(5) This Tribunal did not make a further inspection of the property. It relied upon this description and the evidence and photographs produced in the bundle.

(6) The Applicant, Ms Becher, is the long leaseholder of two of the four flats, namely the first floor flat and the second floor flat. The freeholder of the property is Auriol Management Limited, which is a leaseholder owned company.

The Law

(7) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Leases

(8.*)* The lease for the First Floor Flat is dated 31 December 1960 and was originally between Stenita Investments Limited as the landlord and Roman Becher as the tenant. The term is now for 99 years from 25 December 1960. This is subject to a First Deed of Variation dated 28 February 1991 and a Second Deed of Variation dated 24 November 2010. The Tribunal was provided with a copy of the original lease and the Second Deed of Variation.

(9) The original lease for the Second Floor Flat was dated 21 September 1959 and was between Stenita Investments Limited as landlord and John Anthony Kemm and Susan Elizabeth Kemm as tenants. There were two deeds of variation, the first was dated 28 February 1991 and the second dated 24 November 2010. There is a supplemental lease dated 24 November 2010 and is between Auriol Management Limited as landlord and Daniela Margherita Becher as the tenant. The term has been varied so that it is for 999 years from 24 June 1959. The Tribunal were provided with copies of all of these documents.

(10) The terms that are relevant to any issues in the case are considered below.

The Hearing, Evidence, Submissions and Determination

(11) The Tribunal wishes to comment that the Applicant's submissions are long and intertwined. She has raised some historic aspects and some matters that do not necessarily go to the issues in dispute. To this extent the Tribunal has focused on the relevant service charge accounts and the sums that have been sought from Ms Becher. The following is a brief summary of what was stated from the bundle and the oral evidence and submissions. Because of proportionality it is not possible to summarise every single issue raised but the Tribunal has considered the extensive documents provided.

Interim Service Charges

(12) For each service charge year, interim service charges were sought from the leaseholders. For 2017 the amount was £6,530 **(P179)** and Ms Becher's share was £3,265. For 2018 the sum was £9,700 **(P166)** and the 50% share was £4,850 for the two flats and for 2019 the interim service charges were £7,510 **(P172)** and the share for the two flats was £3,755.

(13) Applicant's Case:

It is Ms Becher's case that there are no provisions in the lease for an interim service charge and that Mr McKeer did not follow the process in the Management Order. Clause 1(c) **(P153)** and clause (i) of the service charge section of the Schedule of Functions and Services (P156) of the Management Order required the interim service charges to be issued once the costs had been incurred. Ms Becher had not been consulted about the interim charges and the Respondent had failed to follow section 9.9 of the RICS code in respect of consultation and section 7.7 as the demands were not in accordance with the lease. The budget was unreasonably demanded as there were no repairs and maintenance during 2017. The original sums sought were unreasonable as it reflected works that were not needed and had been assessed without an inspection of the property and then the adjusted sums did not reflect the full credit due.

(14) Respondent's Case:

Mr McKeer stated that there was no need to carry out a consultation exercise for the budget sums and that the interim service charges were demanded as a budget in accordance with the Management Order. A credit note was issued as there was a report commissioned by the previous manager that suggested that a garden wall needed to be re-built, but on subsequent investigations the work was not required and a credit note was issued against the interim charges.

(15) Discussion and Determination:

The Tribunal accepts that the leases do not have the provision for the manager to seek interim service charges. However, under the Management Order the Manger has "*The right to give notice and to raise an interim service charge in accordance with any Budget he issues once he has established the costs already incurred in the current financial year*". This is not a clear provision and the Tribunal understand the Applicant's submission that the wording suggests that the costs need to be incurred before the interim charges are

sought. However, the Tribunal considers that the natural meaning of a budget and an interim service charge is that these are sums sought prior to the actual costs being known or being incurred. We determine that the provisions in the Management Order were sufficient to allow Mr McKeer to raise an interim service charge. In respect of the need to consult the leaseholders, set out in both the Management Order and the RICS code of practice, whilst it is regarded as best practice, there is no statutory requirement to consult, other than as required by section 20 of the 1985 Act and this will be considered below. Ms Becher makes very detailed challenges about how the interim service charges are made up. The Tribunal do not need to go into the detail of those points as the interim charges are now academic, because the actual figures have been produced and are now considered in the remainder of this decision.

Insurance

(16) The insurance sums claimed for 2017 are £1,045 and Ms Becher's share is £522.50. The 2017 invoice from UKGlobal shows a total sum of £2,911.87 **(P249).** The effective date is shown as 23 August 2017. For 2018 the total premium in the accounts was £2,943 and a 50% share is £1471.50. The 2018 invoice is UKGlobal shows a premium of £2,998.95 with an effective date of 23 August 2018 **(P233).** For 2019 the sum for insurance in the accounts was £2,805 with a 50% apportionment being £1,402.50. The invoice from Lansdown Insurance Brokers shows a premium of £2,457.46 with an effective date of 23 August 2019 **(P252).**

(17) Applicant's Case:

Ms Becher's position is that Mr McKeer did not comply with the requirements of the lease. Whilst the policy notes the Freeholder and the Manager's interest, there is no note of the leaseholders'/tenants' interest. She also claimed that there was no evidence of payment of the premium. Ms Becher was unable to show any evidence that she had asked for her interest to be recorded on the policy but stated that not all the documents were included in the bundle. Ms Becher relied on the case of Green v 180 Archway Road Management Company Limited [2012] UKUT 245 (Archway Road) that a lessor could not recover insurance premiums when he had failed to insure in joint names and that a general interest policy was not sufficient. It is submitted that the Respondent did not provide accurate information when completing the insurance documentation. In response to questions about whether the premises contained any HMOs or were occupied by students, Mr McKeer had answered no but this was incorrect, and she had informed him that the flat was an HMO in 2017/2018, but he had never asked for the licence. Ms Becher stated that she did not provide any details of the rental arrangements by which she let to three PhD students on a three-year term from 2018. She had never been asked for any details of the tenancy but would have provided them if the information had been requested.

18.) Ms Becher's position is that the Respondent disregarded clause 3.3 of the Deed of Variation in which she says the insurance arrangements were varied

with the following wording *" ….. (damage by any risk against which the Lessor maintains insurance excepted provided that such insurance is not vitiated by any act or default of the Tenant his servants agents licensees visitors or sub-tenants)*". Ms Becher says that Mr McKeer failed to include a non-validation clause and as such she has been compromised. She submits that there have been security issues and that Mr McKeer had not told the insurer about the AirBnB and the breach of covenant issue. The Applicant's case is that a failure to inform the insurer of issues in the property would invalidate the policy. Ms Becher had given Mr McKeer copies of the lease clauses in May 2017 and she considered that he did not do anything for ten months and as such she was not properly insured. Ms Becher is suspicious of the comments in the letter from Mr Stitchman in March 2018 stating that a non-validation clause was not standard practice **[P542].**

19.) The Applicant states that there is an obligation to provide insurance cover for three years' loss of rent and that the policies had only one year's loss of rent.

20.) Ms Becher expressed her concerns about a conflict of interest in that a junior person in Mr McKeer's firm had placed the insurance and commission had been paid and this was in conflict of the requirement for transparency in the RICS code and in particular sections 12.5 and 12.6. She stated in her oral evidence that she was unaware of the conflict in respect of the commission until 2019 when the Tribunal requested various documents. It is her view that the Respondent has not been transparent. Her position is that the commission arrangements were not agreed with the Tribunal and that if her representative had not intervened then sums for claims management would have been charged. It is accepted that there is a letter dated 11 August 2017 from Prior Estates that a commission was paid, but Ms Becher says that the amounts were not disclosed.

21.) The Applicant considered that as she had obtained a quotation for a policy which included three years loss of rent and alternative accommodation and includes a full proof of non-validation clause and was only £54 more expensive, meant that the current policy was not a rational choice.

22.) Ms Becher suggested that there was double insurance for seven months in 2017 from January to September.

23.) The Applicant's position is that due to the problems with the insurance, she should not contribute to the premiums. She acknowledges that the 2019 policy is more satisfactory but that it still lacks the non-invalidation clause and that a clause that allows AirBnB lettings is not a substitute for such a clause.

24.) Respondent's Case:
Mr McKeer explained that the invoices do not tally with the sums in the service charge accounts. The accounts follow the accounting convention

whereby the invoices are apportioned to the accounting period that follows the respective account year. For example, the 2017 invoice is apportioned from 23 August to 31 December 2017 and that is allocated to the 2017 service charge accounts. The remainder of the 2017 invoice and an apportioned part of the 2018 invoice is allocated to the 2018 service charge year.

25.) In a letter dated 25 August 2017 **(P536)** Mr McKeer wrote to Ms Becher and quoted from the brokers and the underwriters as follows:
"*Further to your email and the request from the tribunal Appointed Manager for clarification. Please note that the "Mortgage and other Interest" clause found on page 12 of the policy wording. It states it will protect the interest of other parties in the event of a negligent act (by an occupier) which occurred with the authority or knowledge of the insured. I am unable to copy what the Lansdowne broker has stated, as it would be dependent on the circumstances of the claim and the knowledge held by the management company (for example if it was known one of the flats was being used as a cannabis factory leading to a fire breaking out in the flat this would have an impact on the claim). ....*". Mr McKeer's position was that if one leaseholder was in breach of the terms of the insurance policy, the other leaseholders in the building would not be penalised. Mr McKeer stated that in relation to the Applicant's concerns that due to any act of negligence that the building would not be insured, but his position is that he had confirmation from the underwriters that it would be covered.

26.) Mr McKeer stated that all insurance policies now have clauses to cover all leaseholders and tenants. This is a general clause to reduce the administration. He stated that he never received a notice from Ms Becher to request for her interest to be noted. He stated that he was not aware of the HMO licence and that M Becher's tenants were PhD students. The lettings were arranged through a letting agency and he was unsure if it was a single or multiple tenancy/ies. He was aware that the upper flat was let out by an agency but had no details of the lettings. He had not endorsed any breach of covenant at the property and following an exchange of emails with Ms Sandberg, she agreed to cease the AirBnB activity. The Covea policy included a voluntary provision for the AirBnB that had not been sought or requested.

27.) Mr McKeer stated that he had been open about the UKGlobal/Covea policies and had never been explicitly asked about the commission arrangements but when he was asked had provided the information. No individual in the office had received direct commission. In respect of the commission it was explained that the firm would manage any claims and queries.

28.) In respect of the double policy Mr McKeer stated that he had made contact with both insurers but as he had not placed the policies he was not able to cancel the policies.

29.) Discussion and Determination:
Despite the explanation that the insurance invoices are apportioned to follow the relevant service charge year, there is still a slight misalignment of the figures. However, these discrepancies are relatively small and it would be disproportionate to undertake any further analysis to reconcile the small differences.

30.) Under clause 5 (2) of the lease as varied by the Second Deed of Variation **(P33)** the landlord covenants to *"…produce to the tenant on demand (but no more than once each year) evidence of payment of the annual premium or premiums therefore and the terms of the policy or policies and will procure a note of interest of the tenant and/or the tenants' mortgagees is/are made on the policy as often as may be required …."*. The requirement that the leaseholders' or tenants' interests are to be noted on the policy and for the provision of evidence of payment of the premium are operated once the Landlord has received a request to have such an interest noted or a request of evidence of payment. Although the Tribunal understands the frustrations experienced by Ms Becher and the narrative between the parties, we do not have clear evidence that Ms Becher did ask for her interest to be noted or that she asked for evidence of payment of the premium. Therefore, we find that this condition in the lease was not triggered. We distinguish this case from Archway Road as in this case there was not an obligation to insure in joint names; it was only an obligation to note an interest if there was a request for the interest to be noted.

31.) The Tribunal accepts that there were some inaccuracies by Mr McKeer in completing the relevant documents for the respective policies in respect of the HMOs and the letting to students. We accept that Ms Becher had verbally informed him of the nature of the HMO and the letting to the PhD students. There were faults on both sides, by Ms Becher for not following these matters up in writing and by Mr McKeer not seeking complete clarity. However, we have not been provided any clear evidence to suggest that these inaccuracies would have invalidated the insurance policies.

32.) There seems to be a considerable confusion as to the clause that Ms Becher refers to as the 'non validation' clause. She refers to clause 3.3 of the Deed of Variation **(P27).** The wording of that Deed of Variation relates to clause 4(3) of the original lease. Clause 4(3) is a covenant on the tenant to repair **(P86).** The new wording of clause 4(3) after the Deed of Variation becomes - the tenants covenant with the landlord "*To repair the demised premises and every part thereof in tenantable repair throughout the term hereby granted (damage by any risk against which the Landlord maintains insurance excepted unless such insurance is vitiated by any act or default of the Tenant his servants agents licensees visitors or sub-tenants) and it is hereby declared and agreed that there is included in this covenant as repairable by the tenants (including replacement whenever such shall be necessary) the ceilings ….*". This is not an obligation on the landlord to procure an insurance policy with any particular non-validation clause. As such

we do not find that Mr McKeer has failed to follow the terms of the lease in securing the insurance policy.

33.) Clause 6(1) of the original lease has not been varied by the various Deeds of Variations and this clause states that the landlord is entitled to insure for amongst other matters three years' loss of rent. This is an entitlement by the landlord but not a covenant on the landlord. Although it may be prudent for the Manager to seek a policy with three years' loss of rent cover, this is not an obligation to provide such cover. The failure to do so may be imprudent but does not invalidate the policy or impact on the ability to recover the premiums by the service charge provisions.

34.) Section 12.5 of the RICS code sets out general advice about the placing of insurance and explains the prudent steps that should be taken into consideration. Section 12.6 states that leaseholders should be notified annually of any remuneration, commission and other benefits that are derived by the placing of insurance and that a client's informed consent should be obtained in relation to retained commission and best practice should be to declare any income or benefits on the service charge accounts and on request declare the services provided from the income obtained. In a letter from M Stitchman of Prior Estates dated 29 March 2018 to Ms Becher **[P539]** it states "*As Mr McKeer has previously noted a fee is received when the insurance is placed. This fee is split between the broker and Prior Estates (PEL). ....*" This letter then goes onto explain that for that fee the firm will undertake any claims management. It is also noted that the accounts set out the commission payments made to Prior Estates (P183 and P170). Whilst Mr McKeer may have not sought the express agreement from the Tribunal to place a policy with a company that would provide a commission, we find that he has been relatively open about the commission his company received. The commission sums are noted in the accounts and the principle of receiving commission was notified to Ms Becher by Mr McKeer and was referred to in March 2018 by Mr Stitchman. We also accept the evidence of Mr McKeer that on the basis of receiving the commission he would provide a claims handing service. This is normal practice and we do not find that there has been a conflict of interest in Mr McKeer acting in this way.

35.) Ms Becher has stated that she had obtained an alternative quotation. The alternative quotation is at a marginally higher premium, but Ms Becher says that it includes three years' loss of rent and a non-vitiation clause then the Respondent has not acted rationally in placing the insurance elsewhere. The Tribunal does not accept that position. Whilst the policies obtained may not be the best policy, we cannot find that the Respondent has acted irrationally or unreasonably. The relatively small differences in the premiums (the alternative quotation being higher) shows that the policies obtained are within a range of what would be regarded as reasonable.

36.) The double insurance issue seems to be in relation to a policy that Ms Sandberg and Mr El-Sadek had procured for the building that covered part of 2017. The service charge accounts do not seek any contribution for this insurance and this is an issue for set off, which is considered further in this decision.

37.) Overall, we find that the steps taken by Mr McKeer in obtaining the insurance policies were reasonable and the premiums are reasonable in amount. Therefore, we confirm Ms Becher's contributions.

Professional Fees – Revaluation

38) A sum of £780 inclusive of VAT was sought in 2017 for an insurance re-valuation of the property (**P243)** and the share sought from the Applicant for her two flats was £390. The valuation report was provided in the bundle **(P544).**

39) Applicant's Case:

Ms Becher explained that she had not been consulted about the re-valuation exercise. In her statement of case she picked out several errors in the report and considered that the surveyor had not been properly instructed and several parts of the building had not been inspected. She considers that due to some fundamental problems with the report that should a claim have arisen, then she would have been compromised. Certain items that were not part of the demised premises were included in the report and she takes issue as to the valuation of certain elements that are either over or under valued and she is concerned that as there is no reference to the second floor flat and that because the property is described as a three storey building there is no recognition of her second floor flat being included. This item was not included in the budget and Ms Becher was not provided with a copy of the report until seven months after it was prepared. Ms Becher stated that the work had to be done to the satisfaction of the leaseholders and referred to clauses 5(2) and 5(3) of the second deed of variation of the second floor flat **(P33-34)**.

40) Respondent's Case:

Mr McKeer explained that the Management Order made provision for insurance revaluations **(P157)** and that he had approached an independent surveyor and that there was no requirement to consult.

41) Discussion and Determination:

The reference by Ms Becher to clauses 5(2) and 5(3) of the second deed of variation of the second floor flat relates to the obligation to insure and as required to utilise any insurance monies on the re-instatement of the subject property. There is a specific clause at 5(2)(d) that permits the landlord to seek a revaluation of the property when reasonably required, but not more than every three years. As this is a one-off item of expenditure and does not amount to major works at the property, there is no statutory requirement for the leaseholders to be consulted about this item prior to the re-valuation being

undertaken. Although Ms Becher refers to clauses in the lease about insurance, there is no specific requirement in the leases for her to be consulted for a re-valuation exercise and the terms of the lease and the Management Order allow for the re-valuation work to be undertaken.

42) The report does contain some errors and in particular it assumes a floor area based on three flats, whereas there are four flats and describes the building as having three storeys rather than four storeys. However, the Tribunal would be very wary of taking specific items out of the valuation and claiming items are under or overvalued. The work was undertaken by a Chartered Surveyor and his work would be covered by professional indemnity. Whilst there are some flaws in the report, the work has been carried out and a cost was incurred. The level of fees is within a band of fees that the Tribunal would anticipate as being reasonable for this type of work. Therefore, and despite the errors in the report, we find the fees to be reasonable and payable. The element therefore allocated to Ms Becher's flats of £390 is reasonable and payable. There may be some issues about the quality of the management of this contract, but that will be addressed in paragraphs 85-90 of this decision.

General Expenses in 2017

43) In 2017 the general expenses were £18 for the provision of a key. The receipt from Banham is dated 11 March 2017 **(P245).** This was a refund that was paid to Mr El Sadek. The Applicant's proposed share for the two flats is £9.

44) Applicant's Case:
Ms Becher stated that she did not consider that she should pay for this key. She explained that she had already provided Mr McKeer with a key on 18 May 2017 and that as another key had been provided from Mr El Sadek, Mr McKeer had two front door keys. It appears that one key is missing, which is of concern. Her position is that she should also be provided with a refund to reflect the key that she provided to Mr McKeer. She refers to an email sent to Mr McKeer on 18 April 2017, seeking a refund for the key she has provided and that enclosed a copy of a Banham invoice for £18 **(P716).**

45) Respondent's Case:
Mr McKeer stated that he did not recall being given a key. He kept records and there was no mention of this in his records.

46) Discussion and Determination:
Although the receipt provided by Ms Becher on P716 is of poor quality, it is possible to identify it as a different receipt to that provided on P245. However, it is clear that this is a receipt from Banham for £18. The Tribunal are satisfied that Ms Becher did provide Mr McKeer with a key and the evidence on P716 is that she sought a refund in the same way as Mr El Sadek was provided a refund. In these circumstances the Tribunal determines that it is reasonable that given a refund was given to Mr El Sadek and that no refund was given to

Ms Becher, then she should not have to contribute her share to the £18 item. As such the Tribunal finds that this item is not reasonable nor payable.

Professional Fees

47) The sum claimed in 2017 for the professional fees was £12 for Land Registry fees **(P246).** Ms Becher's share is £6. The Office Copy entry for the freehold shows a restriction in relation to Mr McKeer **(P579).**

48) Applicant's Case:
Ms Becher states that she has not been provided with a copy of the invoice and it is unclear what work was done. It is stated that there is no provision in the lease for such a service. She also claims that there is a duplication in relation to Legal Fees incurred in 2018.

49) Respondent's Case:
It was explained that this fee arose when Thackeray Williams registered Mr McKeer's interest as the Tribunal appointed manager on the Land Registry.
50) Discussion and Determination:
The Legal Fees for 2018 are considered below at paragraphs 56-60. This sum is a disbursement for the registration of Mr McKeer's appointment on the Land Registry. Given the implications of the failure to register, it is a prudent step that a Tribunal appointed manager's interest is recorded on the Land Registry. Ms Becher has now seen the documents and the explanation. Although Ms Becher states that the lease makes no provision for the recovery of such sums as service charges, the Tribunal disagrees, We consider that clause 1 of the leases, as varied by the Deeds of Variation, allow, amongst other matters, for the tenant to pay a due proportion of "*any other matters or things certified by the landlord to have been reasonably carried out by the landlord or its agent in connection with the maintenance and management of the whole or any party of the premises…*"**(P3 and P85).** The Tribunal finds that this clause is sufficiently wide enough to allow Mr McKeer to recover the Land Registry fee as a service charge item.

Reserves

51) The reserves sought by Mr McKeer in 2017 was £9,244 **(P179)** with 50% being £4,622; for 2018 the sum was £1,000 **(P166)**, with 50% being £500 and for 2019 £1,000 **(P172)** with 50% being £500.

52) Applicant's Case:
Ms Becher considers that the initial sum sought for reserves was excessive and reflected sums anticipated for the re-building of a party wall, which was subsequently deemed to be unnecessary. The Management Order required Mr McKeer to act 'in accordance with the lease' under clause 1 **(P153)** and there is no provision for a reserve fund in the leases. Reference is also made to the service charge clause (ii) of the Schedule of Functions and Services in the Management Order **(P156).** It is suggested that the RICS code sets out that if there is no provision for a reserve fund in the lease, then there is no

entitlement to create and collect contributions for a reserve fund. She is also concerned that Mr McKeer placed the monies into a single account **(P620)** and not into a dedicated bank account as required by the Management Order under clause 1(j) **(P154).** There is no evidence that it is held in trust as required by section 42 of the Landlord and Tenant Act 1987 and section 6.2 of the RICS code. Ms Becher explained that there were major works in 2016 and that going forward the work to the building would be minimal.

53) Respondents' Case:
It is the Respondent's position that the Management Order allows for the collecting of a sinking or reserve fund under service charges clause ii (P156).Mr McKeer stated that the funds for the property are in a section 42 compliant bank account and that he is subject to regular audits from the RICS and from ARMA. It is a single account, but the reserves are identifiable. The reserve funds in the first year were due to anticipated costs for the rebuilding of a wall that did not transpire. It was stated that a credit note had been applied **(P198 and P213).** Mr McKeer argued that a reserve was needed because there would be some work in the future.

54) Discussion and Determination:
Whilst there are no provisions in the lease for the setting up of a sinking/reserve fund, the Tribunal is satisfied that under the service charge clause (ii) of the Schedule of Functions and Services in the Management Order the manager may seek contributions to a sinking fund. As to the amount of the reserve funds we note that at the start of Mr McKeer's management that it was initially considered that major works were needed to re-build a garden wall. However, subsequent investigations indicated that the work was not required. Whilst it is good practice to have a sinking fund to build a provision against major works that would be required in the life of any building, we consider that the sum sought of £9,244 for 2017 was excessive. It is appreciated that a credit note was given, and this reduced the reserve contribution sought from Ms Becher from £2,311 per flat to £1,123.50 per flat. It is noted that a sum of £250 per flat was sought for subsequent years and overall we think that this is a reasonable level for the reserve funds and determine that for each year the reasonable sum for the reserve fund should be £250 per flat. Therefore, Ms Becher's total contribution for her two flats would be £500 per annum. We are concerned that Mr McKeer has not put in place a proper arrangement about the bank accounts. We accept that the bank account is a client account and as such is likely to comply with section 42 of the Landlord and Tenant Act 1987. However, the Management Order at (j) made specific provision that there should be a separate account for the reserve funds and Mr McKeer has stated that all funds have been held in the same account. In the opinion of the Tribunal, this does not go to whether the reserve sums are payable, but goes to the issue of Mr McKeer's management, which is considered below.

Legal Fees

56) In 2018 there were two items that related to legal fees. The sum of £1,319 **(P166)**, with a 50% share being £659.50 was conceded by the Respondent **(P787**). The second legal fee in 2018 is not in the accounts but is set out in Ms Becher's statement **(P439)** and is stated to be £329, with Ms Becher's share being £169.50. She refers to an invoice in a bundle dated 2018 and prior to the application. In 2019 the legal fees were £495 with the Applicant's share being £247.50. The invoice from Thackeray Williams is dated 30 September 2019 and is in relation to professional advice to Mr McKeer in relation to disputes in the building and in particular the alleged Airbnb lettings **(P221).** In 2020 legal fees of £12,959.78 were originally sought from Ms Becher but this was conceded by the Respondent **(P779).**

57) Applicant's Case:
Ms Becher's position is that the sum of £495 is the cost in relation to Mr El Sadek's breach of covenant. She did not instruct the solicitors and therefore she should not contribute towards this item. Under the terms of the Management Order under Fees, clause (iv) the item is only payable as a service charge item once attempts have been made to recover the costs directly from any relevant leaseholder **(P157)** and that there are no provisions in her lease for the recovery of legal fees or to provide an indemnity for legal fees on an enforcement issue. Her view was that it was not necessary for Mr McKeer to seek legal advice and that she should not have to indemnify the Manager as it is his job to enforce the terms of the leases.

58) Respondent's Case:
Mr McKeer acknowledged that he had not tried to recover the costs from Mr El Sadek. His position is that the Applicant had raised the issue regarding the breach of covenant and wanted the issue addressed, but that she had not provided an indemnity to cover the costs and therefore the item was placed on the service charge. Because of the pressure he had been put under he had been forced to seek advice about how to proceed. He stated that under clause 5 (5) of the lease, there is an indemnity clause that states "*that (if required by the tenant) the landlord will enforce the covenants substantially similar to those contained in clause 4 here of entered into by the lessees of the other flats comprised in the said building upon the tenants indemnifying the landlord against all costs and expenses of such enforcement*".

59) Discussion and Determination:
In respect of the legal fees of £329 (50% share £169.50) this is not an item in the service charge accounts and appears not to have been sought from Ms Becher. The submissions made by Ms Becher on this aspect appear to be a duplication of other issues that have either been withdrawn or are dealt with under a different heading in this case. To the extent that is an item that is not covered elsewhere in this decision, the Tribunal finds that this item is not specifically payable by the Applicant.

60) In relation to the legal fees of £495 incurred in 2019 for the breach of covenant, the Tribunal has had consideration of the terms of the Management Order. The Order provides at Fees (iv) that "*The Manager is entitled to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings whether in the Court or First-tier tribunal, to enforce the terms of the Leases. For the avoidance of doubt, the manager is directed to use reasonable efforts to recover any such costs etc directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.*" The Tribunal understand the frustrations experienced by Mr McKeer in trying to resolve the issues in relation to the breach of covenant and in particular as he was clearly under pressure from Ms Becher to resolve this matter. However, we consider that this clause in the Management Order was the way to proceed for the recovery of this item of expenditure. If he had tried to recover the sum from the leaseholder in breach, but he had been unable to obtain the monies due, then the Management Order makes provision for the Manager to recover the costs from the service charge. However, Mr McKeer acknowledged that he did not pursue Mr El Sadek for this item and as such we do not think it is reasonable to charge for this item as a service charge. In respect of the indemnity clause in the lease, the Tribunal is of the view that Mr McKeer was only obliged to pursue any breach of covenant on the request of another leaseholder if there was an indemnity undertaking. The failure to obtain such an undertaking was not the mechanism for this item to be included in the service charges. The Tribunal determines that Ms Becher's contribution of £247.50 is not reasonable and not payable.

Accounts:

61) For both the 2018 and 2019 service charge years there is a sum of £348 for accounts, with Ms Becher's share for her two flats being £174 for each year. During the course of the hearing, Mr McKeer accepted that this was an item that was not recoverable and as such a total credit £348 needs to be given to Ms Becher.

Repairs and Maintenance in 2018

62) In 2018 the repairs and maintenance sought was £5,528. Ms Becher's share for her two flats was £2,764.00. This sum was made up from three invoices: 1) £3,628.00 was for work undertaken by BML Building Services and the invoice is dated 26 November 2018 **(P234)** and the works are described as "*To erect scaffolding above out building to access high level defect. Board up window for security reasons. Return to provide alarm to scaffold. Carry out the specified building works on all areas.*"; 2) An invoice from BML Building Services dated 6 July 2018 for £1,572 and described as works to the cupboard under the stairs and decoration to common parts as per an email dated 14 September 2017 **(P236)** and 3) an invoice from K Neacy dated 22

May 2018 for the sum of £320 for the supply and erection of a treble ladder and to re-fix a downpipe to a side elevation **(P238).**

63) Applicant's Case:
As a general position Ms Becher stated that the gutters and downpipes had been inspected in 2016 and repair works had been carried out at that time. Regarding the first invoice, Ms Becher stated that she had not been consulted about the work and there was no evidence of a competitive tender exercise. Unnecessary work had been carried out by K Neacy (invoice 3) and that a serious emergency repair was required. The works had not been properly monitored and there had been a delay of 29 days. In her view the 2016 work had dealt with the major works and it is likely the work was as a result of storm damage from the 'Beast from the East' and should have been covered by insurance. When the scaffolding had originally been erected no alarm was placed on the scaffolding. She had been concerned about security issues and had requested that a window was boarded up and the alarm was also requested by her.

64) In relation to the second invoice Ms Becher stated that the cupboard under the stairs was demised to Ms Sandberg. She considers that the cupboard work was not carried out to a professional standard and that a Health and Safety report suggested that the work had not been done properly. The work should have been completed with a painted finish and that had not occurred. Ms Becher also suggested that as the cables belong to the electricity supplier and the box belongs to the landlord, then the work should have been undertaken by the utility provider. It is her position that Mr McKeer did not supervise the works properly. Ms Becher sourced an alternative quote for £475 from a local handyman. Finally, Ms Becher suggests that as she has no access to the vault area, she questioned why she should have to contribute when she is unable to inspect the works. There are photographs of the works showing a plywood boxing in of cables and a Ryefield Supply Box **(P609 and P610).** In respect of the painting to the communal areas Ms Becher's position is that the work was done to an unreasonable standard: one area did not require sanding and the other area required some preparatory work as she alleges that Mr El Sadek had damaged the wall when he removed a health and safety poster and that he should therefore pay for the work. She stated that there was no section 20 consultation.

65) The third invoice was for the sum of £320. Ms Becher says this was an emergency work resulting from hurricane winds and that it should have been claimed from the insurance but instead was repaired with a stick with no waterproof adhesive and the inadequacy of the repair resulted in more significant works detailed in the first disputed invoice for 2018. She refers to an email from BML Building (P581) that states "*I was informed that there had been works done not so long ago and the pipe was knocked.* (illegible section) *was supposedly fixed by knocking it back with a stick*".

66) Respondent's Case:

Mr McKeer said the first invoice for work in November 2018 was not as a consequence of the 'Beast from the East' as that had occurred in February 2018. As it was not a weather-related issue then there was no scope to claim on the insurance. The repair was a different problem and that a joint had separated at the highest roof level because of bracket failure and the work could not be undertaken from a ladder. He confirmed that the original specification had included an alarm on the scaffolding as this was a standard condition required for insurance purposes. Mr McKeer acknowledged that there was no consultation and that he had not made a section 20ZA application for dispensation and understood the consequences of the failure to apply for dispensation.

67) In relation to the second invoice, it was acknowledged that there was no section 20 consultation but Mr McKeer's position is that there were two schemes of work. One for the boxing in work to the electrical intake in the vault area and presumably the asphalt works and the other works being the re-decoration of the communal parts. In relation to the boxing in work, Mr McKeer said that it would be impossible to separate the boxed area reflecting the landlord's property and the property belonging to the utility company. The alternative quotes were after the works and it would be easy for someone to underquote after the event.

68) In relation to the third invoice, Mr McKeer was unsure what was the source for BML's comments in the email about the stick. He says there is no clear evidence about how the work was undertaken. It is his opinion that there was no suggestion that there was storm damage or that it could have been recovered by an insurance claim.

69) Discussion and Determination:
In respect of the first invoice for £3,636, the Tribunal finds that this was a legitimate repair and we accept that the work in November 2018 was not a direct consequence of any February 2018 weather conditions and therefore could not be part of an insurance claim. However, we find that this work would be categorised as major works that should have been consulted upon in accordance with section 20 of the 1985 Act. The failure to consult means that there is a statutory limit to the amount that can be claimed. The Respondent was aware of section 20ZA but had not made an application for dispensation with the consultation requirements. Therefore, we determine that for this invoice we limit the amount per flat to £250.

70) Turning to the second invoice for £1,572, it seems to be common ground that the sum of £1,068 was for the boxing in work in the vault area and the asphalt repairs and £504 for the decoration to the communal areas. The first cost is work to an area where the proportionate share would be ¼ and the share for the communal entrance hall would be a 1/3 for each of the Upper Ground Floor, the First Floor and the Second Floor Flats. The contributions in relation to the first scheme would be marginally above the £250 threshold, with each flat contributing £267. Mr McKeer was aware of the consequences

of non-consultation. We accept Mr McKeer's submission that although the works were on one invoice, they were different schemes of works. In relation to the vault works, we consider that the work was required as it would not be satisfactory if such equipment was not accessible to the leaseholders. To make proper provision to secure the equipment seems a sensible step. In the opinion of the Tribunal it is not practical for the separation of the works as suggested by Ms Becher. Although she is not satisfied that she cannot access the works, this does not mean that she has no liability to contribute to the works. We accept that the works are crude but given the extent of the works that includes the asphalt repairs then we find that the sums are reasonable and payable. However, these are works that would normally come within the scope of section 20 of the 1985 Act. Because of the failure of Mr McKeer to properly consult and not to seek dispensation, then we limit Ms Becher's contribution to this element of the invoice to £250 per flat. In relation to the decorative works in the communal hallway, there is no specific evidence in respect of Ms Becher's allegations that Mr El Sadek damaged part of the area. It is reasonable that there will be instances of various repairs that are required due to the activities of occupiers, visitors or contractors. It is not always practical to identify who caused the damage and to pursue recovery of costs. In the opinion of the Tribunal, we find that Mr McKeer did not act unreasonably by arranging for the redecoration works and to seek recovery by the service charge. In our opinion the works are relatively modest, and the sum sought from the contractor is reasonable given that there would be some attendance and preparation time and materials. We determine that this item is reasonable and payable and that Ms Becher's contribution of £168 per flat is payable.

71) The final item is the sum of £320 for the downpipe repair. Ms Becher refers to the evidence of the repair being undertaken by a stick and refers to an email in which it is stated the repair '*was supposedly fixed by knocking it back with a stick*'. This is not clear evidence that the work was carried out in that manner. Also, we have no clear evidence that the disrepair was as a result of storm damage and could be claimed on the insurance. We appreciate Ms Becher's concerns about repairs to the property but given the lack of clear evidence about how the work was undertaken and given the relatively small sum involved, we find that the work was undertaken as described in the invoice. We also find that the sum was reasonable and as such payable. Ms Becher's contribution for both flats is £160.

Repairs and Maintenance in 2019

72) The repairs and maintenance for 2019 was £530 **(P172).** There are three invoices that make up this sum. The first is from Banham dated 28 February 2019 for £114.00 and the invoice notes "*Main front door lock replace EL4000 handel*" **(P225).** The second invoice is £226.20 in an invoice from BML Building Services dated 8 April 2019 **(P226).** The work is described as "Attended site to find leak on the wall plate elbow connector and a crack on the tap. Replaced both. Tested and working. The third invoice is for £189.60

from BML Building Services and is dated 31 January 2019 **(P227).** The works are described as "*Arranged early AM Appointment works refused when arrived on site*".

73) Applicant's Case:
In respect of the Banham invoice, Ms Becher relies on an email from Banham dated 24 January 2019 (P648) that stated that in respect of the damage done to the lock handle on the front door "*we can only believe that this damage was caused through extreme force and misuse. The metal has been snapped off, not at the hinge /lever but the actual metal frame. This is not something that I have encountered before and can only really have been caused by excessive force*." Ms Becher's evidence is that this problem arose as a domestic incident and was caused by Mr El Sadek's son.

74) Ms Becher's position on the second invoice is that the sum is unreasonable as it was in respect of expenditure in relation to property demised to her. She had sought a quotation from BML but the request was ignored. She was denied access to the stopcock which is located in the vault area. The work was arranged by the Respondent and carried out by BML and they damaged the surrounding brick area. The work was not supervised and the sum was unreasonably incurred. Ms Becher obtained an alternative quotation of £90. The tap has been moved and to relocate the tap and repair the brick work would be £130. Ms Becher seeks the removal of the sum from the service charge and that she should be credited with £130.

75) The final cost seems to relate to an abortive visit by BML Building Services to carry out a repair to the door handle, that was eventually carried out in February 2019 and is referred to above. Ms Becher stated that BML were not a qualified locksmith and her evidence is that she and her tenant spoke to the workman who declined to work on the Banham lock as he did not have the specialised equipment to do the work. There is an email from one of Ms Becher's tenants dated 6 February 2019 **(P658)** that gives an account of the events on 31 January 2019, the date of the abortive visit. The account suggests that the BML employee attended to look at the lock as he was already at the property in relation to other work. The workman acknowledged that there would have been some "*considerable force to snap the lock*".

76) Respondent's case:
In his statement of case, Mr McKeer does not engage with the issue of how the damage occurred and purely states that the work was needed and was undertaken. In a letter from Mr McKeer on 6 February 2019 to Ms Becher's adviser, he states that Mr El Sadek stated that the handle was not broken by misuse but was damaged in the normal use of the door.

77) Mr McKeer disputed whether the work to the tap was as a consequence of frost or freezing as the work was identified in May. However, he stated that he

was not going to dispute this issue as a service charge item with Ms Becher and he would invoice her directly.

78) In relation to the abortive call out charge, Mr McKeer said that the workman was denied access and the charge is not unreasonable.

79) Discussion and Determination:
In relation to the door handle, the Tribunal accepts the clear evidence from Banham that the door was damaged from misuse and seems to have been subject to excessive force. As such we consider that Mr McKeer should have taken steps to seek the recovery of this item from the relevant leaseholder and only when such steps had failed could he then seek to recover this by the service charge. As such we find this sum is not reasonable and not payable.

80) In relation to the work to the tap, it seems common ground that the tap is demised to Ms Becher. As such the Tribunal finds that it cannot be recovered as a service charge item. The Tribunal does agree with Ms Becher that she should be reimbursed £130 as that sum would seem to involve repair work to the brickwork which is part of the common structural element of the property and not an area demised to her. In reality whilst the tap may have been moved to a slightly different location, we are not persuaded that this is enough to justify making a finding of set-off to Ms Becher.

81) With regards to the final item. the Tribunal considers the email of the Applicant's tenant a useful background to this issue and seems a credible account. As such we do not consider that this was an abortive visit because the contractor was denied access. We find that the workman was already at the property and that this was an assessment of the work required. We do not think that it is reasonable for such an invoice to be raised and therefore determine that this sum is not reasonable nor payable. When making this decision we have also had consideration to our findings in paragraph 79 above.

Repairs and Maintenance in 2020

82) Respondent's Case:
There is only one item of expenditure identified for 2020 for the sum of £63.20 **and this appears to reflect the contribution sought from Ms Becher for her two flats.** There is no invoice for this matter. The work was undertaken by BML Building services to tighten the screws on the door plate.

83) Applicant's Case:
Ms Becher states that this is an excessive amount and that she could undertake the work herself.

84) Discussion and Determination:
The Tribunal accepts that Ms Becher may well have been used to undertaking such small repairs whilst she was managing the property. However, that is not

the test for such matters. This is a service charge item and it is entirely reasonable that the Manager instructs a contractor to undertake the work. The sum is modest and reflects the call out charge that would have been incurred. As such we find that the sum is reasonable and payable. As this is a service charge item to the common hall area this is a cost that would have been apportioned to the three flats having access to the internal common parts. Therefore, Ms Becher's contribution for her two flats would **be ~~£21.07~~ £63.20 in total.**

Management Fees

85) In 2017 the management fees sought were £1,680 (50% share £840); for 2018 the fee was £1754 (50% share £877); for 2019 the fee was £1,800 (50% share £900) and for 2020 the sum claimed is £900 (50% share £450).

86) Applicant's Case:
Ms Becher considered that Mr McKeer had not followed the terms of the lease or the Management Order or the RICS code of practice. She considers that there has been a failure to manage the building and consequently she has suffered. She has made detailed submissions about her concerns about the level of management that include delays in work being undertaken and a failure in respect of health and safety issues; that he has permitted double insurance on the property; that there was a five month delay in submitting his report to the Tribunal and Ms Becher considered the report to be inaccurate. There are poor relationships between the leaseholders and Ms Becher considers that Mr McKeer had done nothing about these issues and that the relationships have deteriorated further. She considers that she has not been treated fairly. She says that VAT has been added to the fee and there was no provision of this in the Management Order and that Mr McKeer has not evidenced that he is entitled to charge VAT. She states that the appointment was a personal appointment of Mr McKeer and that she was not allowed to access the staff at Prior Estates. Overall, Ms Becher considers that all the management fees should be removed.

87) In 2017 as Mr McKeer was appointed from 27 January instead of 1 January, there should be an adjustment to reflect the shorter period of management.

88) Respondent's case:
Mr McKeer accepted that the Management Order did not make any provision for his fees to be increased during his term as manager and as such the fees should be £350 plus VAT per unit for the duration of his management. He explained that Prior Estates are VAT registered. In respect of the 2020 fees this is an accounting exercise as the fees are recoverable in arrears. However, he noted that the fees of the new manager, Mr Kingsley are £700 per unit and are double his fee rate. He explained that he has suffered a great deal of animosity from Ms Becher, which he had not previously encountered. Between 2017 and 2019 there had been 150 emails from Ms Becher and 63

emails from her representative since 14 January 2021. In one letter he has been accused of racial discrimination and states that this is without any justification **(P840)**.

89) Discussion and Determination:
In respect of VAT, at clause (v) of Fees in the Schedule and Functions and Services in the Management Order, there are provisions for VAT (P157) and this is certainly normal practice. Whilst the appointment is personal to Mr McKeer it is the usual practical arrangement that fees are sought via the relevant company of the managing agent. There are several examples in the bundle that Prior Estates are VAT registered, including at **P224**. It has been acknowledged by Mr McKeer that the fee level should be £350 plus VAT per unit for the duration of his appointment.
The next issue for the tribunal is whether the level of fees are reasonable given Ms Becher's submissions about Mr McKeer. In most cases when a manager has been appointed under the 1987 Act, there will be historical problems and, in many cases, there is a breakdown in the relationships between the parties. It is in exactly these cases that a manager needs to ensure that the management service is above reproach. We acknowledge that Mr McKeer has been hampered in his duties by the constant pressure from Ms Becher as evidenced by the extensive correspondence from her and her adviser. We accept that dealing with these issues would have been very time consuming. However, there have been flaws in Mr McKeer's management that have been identified in the previous paragraphs. Whilst we may have been minded to reduce the management fees to reflect some of the flaws in the management, we are mindful that the fees payable to Mr McKeer are relatively modest and note in particular that they are 50% of the fees accepted for Mr Kingsley. Although Ms Becher disputes the management undertaken it is clear that Mr McKeer has undertaken some management and has had considerable engagement with Ms Becher; we therefore find that the unit fee of £350 plus VAT is reasonable and payable.

90) However, there is still an element of apportionment that is required to reflect the period of Mr McKeer's appointment. In 2017 his appointment started on 27 January and as such the annual fee of £350 plus VAT should be apportioned. The apportioned sum is £390 including VAT for each flat, and for Ms Becher the sum for that year for her two flats would be £780. We confirm the figure of £840 for 2018 and 2019. In respect of 2020 Mr McKeer's appointment ceased on 31 March. For the three months from 1 January to 31 March, the apportioned sum is £105 per unit and Ms Becher's contribution for her two flats is £210.

Set off
91) Applicant's Case:
Ms Becher seeks a sum of £210 as set off as a 50% contribution for a bill she paid for an Electrical Installation Certificate Report **(P426 and P488)**. At P488 is an invoice from Aviss Electrical Services Limited dated 19 October

2016 for the sum of £420. This was incurred during her period of management, but she states that the Respondent agreed to pay 50% at a meeting on 18 May 2017 and this was witnessed by Ms Rawicz.

92) Ms Becher also seeks a 50% contribution towards a sum of £2,851.68 for an insurance premium she paid. There is an invoice from Lansdown dated 9 September 2016 for an insurance policy that was effective from 6 September 2016 **(P489).** Ms Becher stated that the item is relevant as the period of insurance covers part of the time that Mr McKeer was appointed. It is her position that at a meeting dated 18 May 2017 Mr McKeer confirmed that this was the only policy in force and that he promised that he would refund the element in respect of the other two flats. In response to his position that he could not refund any expenditure prior to 1 January 2017 **(P492)** as under the Directions under LON/00AN/LAM/2016/0031 allow the Manager some discretion. Ms Becher denies that Mr McKeer was unable to cancel the policies as under the Management Order he could terminate any contract. Ms Becher stated she refused to pay a contribution to Ms Sandberg and Mr El-Sadek for the insurance policy they put in place.

93) Respondent's Case:
It is Mr McKeer's position that as these were sums incurred prior to his management then he could not make the reimbursement. He stated that he had made contact with both insurers but as he had not placed the policies he was not able to cancel the policies.

94) Discussion and Determination:
Both of these invoices pre-dated Mr McKeer's appointment. Whilst we can appreciate that Mr McKeer was trying to be helpful in the transition to his management, it would have been inappropriate for him to have reimbursed Ms Becher for these two items. He would not have been in a position to claim the service charge contributions for the other leaseholders and to reimburse Ms Becher would have provided an accounting problem. Whilst the insurance policy included a period during his management, the sums were incurred whilst Ms Becher was still managing the building and within the previous service charge year, so she had a mechanism to reclaim these sums from the other leaseholders. As such we do not accept Ms Becher's position and refuse her claim of set off for these items.

Fees and Costs:
Ms Becher has made applications for an order under section 20C of the 1985 Act and under paragraph 5A to Schedule 11 of the 2002 Act. Ms Becher stated that she had been vindicated in bringing the application and had no other option but to proceed with the case. Mr McKeer explained that it had taken him eight days to prepare this case and at a day rate of £750 plus VAT the costs were in the region of £6,000. However, he made no particular submissions about these applications.

The Tribunal appreciates that the amount of correspondence from the Applicant must have been time consuming for Mr McKeer and we note that he has tried to engage with her, even though she was not satisfied with the responses. However, Ms Becher has been successful in many aspects of her application. We accept that due to the deteriorating relationships between the parties, that it was impossible that this application could have been resolved without a tribunal application. However, there were duties on Mr McKeer to act in a manner to try to resolve the issues. Taking all of these aspects into account the Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, that any costs incurred as part of this application are not to be treated as 'relevant costs' for future service charge years. The Tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, that the Applicant's liability for any administration charge in respect of litigation costs is extinguished.

The Applicant also makes an application for the reimbursement of her fees under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the 2013 Rules). For the same reasons that the Tribunal made the orders under section 20C and paragraph 5A, we also determine that Mr McKeer is to reimburse Ms Becher the application fee of £100 and the hearing fee of £200. Mr McKeer should make that reimbursement within 28 days of the date of this decision.

Both parties confirmed that they were not seeking costs under Rule 13 of the 2013 Rules.

Next Steps:
Attached to this decision is a spreadsheet that shows the Tribunal's determination in relation to the Applicant's two flats. It is appreciated that there will be some accounting steps that are needed to reflect Ms Becher's revised position following this determination. Mr McKeer should now liaise with Mr Kingsley and with Ms Becher and provided an adjusted statement of account to reflect the findings in this decision.

Name: Helen Bowers **Date:** 21 October 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix 1

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only of the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20 Limitation of service charges: consultation requirements

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

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

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

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

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

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

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

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

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

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

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

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

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20B.— Limitation of service charges: time limit on making demands.

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C.— Limitation of service charges: costs of proceedings.

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

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA Consultation requirements: supplementary

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

(2) In section 20 and this section—

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

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

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

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

(b) in any circumstances so prescribed.

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

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

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

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

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

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

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

(6) Regulations under section 20 or this section—

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

(b) may make different provision for different purposes.

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

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner it which it is payable.....
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred fro 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 it which it would be payable.
(4) No application under subsection (1) or (3) may be made in respect of a matter which
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been subject of determination by a court, or
(d) has been subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement,

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

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Paragraph 5A to Schedule 11

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
(3) In this paragraph—
(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court."

Appendix 2

2017 Service Charge Year			
	Total	Share Sought from A	FtT Determination
Total Insurance	1045	£522.50	£522.50
Management Fees	1680	£840	£780
General Expenses	18	£9	£0
Professional Fees	12	£6	£6
Surveying	780	£390	£390
Reserves	9244	£4,622	£500

2018 Service Charge Year			
	Total	Share Sought From A	FtT Determination

Total Insurance	£2,943	£1,471.50	£1,471.50
Management Fees	1754	£877	£840
Legal Fees and Costs	£1,319	£659.50	£0
Repairs and Maintenance	£5,528	£2,764	~~£1,696~~ **£1,496**
Accountancy	£348	£174	£0
Reserves	1000	£500	£500

2019 Service Charge Year			
	Total	Share Sought From A	FtT Determination
Total Insurance	£2,805	£1,402.50	£1,402.50
Management Fees	1800	£900	£840
Legal Fees and Costs	£495	£247.50	£0
Repairs and Maintenance	£530	£265	£0
Accountancy	£348	£174	£0
Reserves	1000	£500	£500

2020 Service Charge Year			
	Total	Share Sought From A	FtT Determination
Management Fees	£900	£450	£210
Legal Fees and Costs	£12,960	£12,960	£0
Repairs and Maintenance	~~**£63.20**~~ **£94.80**	~~**£21.07**~~ **£63.20**	~~**£21.07**~~ **£63.20**