FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**MAN/00CH/LSC/2022/0031**
Property	:	**Flat 68 Friars Wharf Apartments, Green Lane, Gateshead, Tyne and Wear, NE10 0QX**
Applicant	:	**Paul Scott**
Representative	:	**N/A**
Respondent	:	**Adriatic Land 5 Limited**
Representative	:	**JB Leitch Solicitors**
Type of application	:	**Landlord and Tenant Act 1985 – s 27A** **Landlord and Tenant Act 1985 – s 20C**
Tribunal member(s)	:	**Tribunal Judge L. F. McLean** **Tribunal Member Mrs S. Kendall**
Date of determination	:	**23rd May 2023 on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Date of decision	:	**9th June 2023**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that of the demands for service charges under the Underlease relating to Flat 68 Friars Wharf Apartments, Green Lane, Gateshead, Tyne and Wear, NE10 0QX in respect of the financial years 01.04.2019-31.03.2020, 01.04.2020-31.03.2021 and 01.04.2021-31.03.2022, the total sum of £661.45 was not payable by the Applicant to the Respondent by way of service charge.

(2) Under Section 20C Landlord and Tenant Act 1985, all of the costs incurred, or to be incurred, by the Respondent in connection with these 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 Applicant.

(3) The Tribunal orders that the Respondent must, within 28 days of delivery of this Decision to the parties, reimburse to the Applicant the whole of any HMCTS fee paid by him to commence these proceedings.

Background

1. The Respondent is the current head leasehold proprietor of a development which includes the building known as Friars Wharf Apartments, Green Lane, Gateshead NE10 0QX ("the Building"). The Building consists of a series of purpose built blocks comprising 85 flats, sub-divided into three units referred to as Block A, Block B and Block C respectively.

2. The Applicant is the current leaseholder of Flat 68 within the Building ("the Property"). The Tribunal has been provided with a copy of an underlease for the Property made on 25th February 2010 for a term of 125 years (less the last 7 days) from 12th June 2003 and made between Riverside Apartments (NE) Limited and Declan Thomas Ivers ("the Underlease"). The Respondent is the Applicant's current landlord of the Property under the Underlease.

3. The Underlease provides for the Respondent to provide a range of services, including the supply of electricity to the common parts of the Building, and to keep the common parts of the Building in repair. The Underlease also provides for the Applicant to pay a service charge in relation to 1/85th of the Respondent's costs of providing the services and carrying out the repairs. There is no substantive dispute between the parties regarding the scope of the Respondent's covenants, nor the basis on which the service charge is to be demanded and paid, the relevant provisions of which are set out in the Respondent's statement of case. Accordingly, the Tribunal will not rehearse the detailed provisions here.

4. The dispute between the parties mainly relates to two key parallel issues which arose between April 2019 and June 2022, and some additional minor matters which have subsequently become subsumed into the main application. These are all described below.

The Electrical Billing Dispute

5. Until 31st March 2019, the Respondent retained Bradley Hall as its managing agent for the Building. It appears that on or around 1st December 2016, Bradley Hall entered into a 4 year contract for communal electricity supply (through Engie) to the Building, but erroneously opened the two accounts in its own name rather than in the name of the Respondent. The reason which has been suggested for this on behalf of the Respondent was because it is an overseas registered company and it is common practice for energy suppliers to require an account to be opened in the name of a customer based in the UK. Whether or not this is the case, Bradley Hall were named as the account holders despite having no proprietary interest in the Building. Bradley Hall were replaced by Zenith Management Limited ("Zenith") from 1st April 2019. It also appears that Zenith therefore encountered significant problems in obtaining initial reconciliations of the electricity accounts for around a year afterwards. In March 2020, Engie corrected its invoices and these were subsequently paid by Zenith.

6. On or around 23rd August 2021, the Applicant (along with all other leaseholders of the Building) was sent a service charge "balancing demand" in the sum of £1,177.21 in respect of Flat 68 by Zenith. Various leaseholders, including the Applicant, corresponded with Zenith to dispute the Demands. At some point, by around September 2021 at the latest, it also became apparent that the Respondent was owed credit notes from Engie totalling £64,570.34 in respect of the supply of communal electricity to the Building – but because these were also addressed to Bradley Hall it was not possible for either Zenith or the Respondent to apply these credit notes to the accounts for the Building, at least not by 23rd August 2021 in any event. It was not until 26th January 2022 that the credit notes were rectified and could be credited onto the accounts for the Building. In the meantime, the fixed rate electricity supply contract negotiated by Bradley Hall had expired in December 2020 and Engie continued to supply electricity to the Building on its variable "out of contract" rates.

7. Once the credit notes were rectified and applied to the Respondent's account for the Building, the Respondent negotiated a new electricity supply contract which was backdated to October 2021 and set to run until October 2022.

8. Zenith's management contract ended on 31st March 2022 and they were replaced by the current managing agents, Trinity (Estates) Property Management Limited ("Trinity"). In June 2022, Trinity arranged for the full amount of the 23rd August 2021 demand in the sum of £1,177.21 to be credited back to each leaseholder, including the Applicant.

9. The Applicant asserts that the failure to negotiate a new electricity contract in readiness for December 2020 resulted in the following additional costs:-

    A. Higher unit rates December 2020-October 2021 of £20,614 (1/85th = £242.52)
    B. Higher unit rates October 2021-October 2022 of £33,128 (1/85th = £389.74

The Air Source Heat Pumps Dispute

10. The Applicant has supplied a detailed chronology of the events relating to this issue, which will not be recited in full here. The most pertinent aspects are discussed below.

11. The Building includes five large air source heat pumps situated at ground level ("the Heat Pumps") which connect into a heating network for both blocks B and C of the Building as a whole and the individual flats within those blocks ("the Common Heating System"). It is not disputed that paragraph 3 of the Sixth Schedule to the Underlease obliges the Respondent to keep the Building, including the Heat Pumps, in a good and substantial state of repair. The Heat Pumps do not provide hot water, which is supplied through a different system.

12. Zenith took management of the Building from 1st April 2019. The maintenance contract for the Heat Pumps transferred to North East Fire Protection from December 2020. The Common Heating System failed between 5th February 2021 and 26th March 2021, and again on 9th April 2021. There is some suggestion from the Respondent that a temporary repair to a leak in the Common Heating System on 19th April 2021 meant that the Common Heating System was at least partially operational from that time, but this is unclear from the papers submitted. In any case, by 2nd June 2021 the Common Heating System had failed altogether and a temporary workaround was adopted which involved using some of the Heat Pumps as immersion heaters, limiting the Common Heating System to a circulating temperature of 40°C. This state persisted until 17th December 2021 when the Common Heating System was repaired and brought back online. However, the Common Heating System failed again between 7th January 2022 and 22nd February 2022. Trinity are currently in the process of procuring the replacement of the compressor unit for one of the Heat Pumps, after leaseholder consultations under Section 20 of the Landlord and Tenant Act 1985.

13. The Applicant asserts that this amounted to a failure to comply with repairing obligations which resulted in the following additional or wasted costs:-

    A. Ineffective repair work £43,818 (1/85th = £515.51)
    B. Funds ringfenced in service charge budget for replacement Heat Pump £23,000 (1/85th = £270.59)
    C. Higher communal electrical running costs estimated at £18,200 (1/85th = £214.12)

The Entry Fobs Dispute

14. Around 60 entry fobs were ordered by the Respondent's managing agent(s) for the secure parking in block A comprising seven parking bays, together with other parts of the Building. The Applicant says he was never provided with any such fobs and that they were overpriced in any event. The total cost was £3212.40 (1/85th = £37.79).

The Individual Meters Dispute

15. Leaseholders have paid a total of £6,600 (1/85th = £77.65) by way of service charge for the installation of individual meters to enable separate billing for usage of the Common Heating System. The Applicant says that these meters have never been operational.

16. In December 2022, Trinity obtained a quote from the billing company in the sum of £4,237 to investigate why these meters are not working and the Applicant objects to paying for this. He considers that either the original sum spent should be refunded, or the remedial works carried out at no cost to the leaseholders.

Issues in the application

17. The application was made on or around 27th September 2021. The Applicant originally asked the Tribunal to make the following orders and/or rule on the following issues:-
    - Are the freeholders/managing agents liable for recompense for the additional costs incurred by the leaseholders on being placed onto a higher tariff?
    - Are the leaseholders entitled to interest on the additional charges for electricity invoiced to the leaseholders which hasn't been credited to their accounts (which we believe to be at the statutory base rate + 8% accrued since the date each individual paid)?
    - The heating system does not appear to have been fully maintained and the repairs undertaken so far have been temporary due to the financial mismanagement of the service charge budget. This has resulted in duplicate work and inefficient use of contracted labour. By addressing the initial failure with a permanent repair and having a PPM schedule in place the additional repairs and the additional costs of electricity could have been avoided. Should the freeholder/managing agent be responsible for these additional avoidable costs?
    - Is there a case for compensation to the leaseholders as they have gone through the majority of two winters without heating?

18. Through the Applicant's Statement of Case and responses to the Respondent's Statement of Case / evidence in support, the Applicant also raised the following additional issues:-
    A. Whether the Tribunal could direct the reallocation of funds back into the main service charge budget which are currently ringfenced for the replacement of a heat pump.
    B. Whether the Tribunal could direct either a refund of the amount charged to the Applicant for the individual metering service not received, or alternatively prompt provision of the service originally paid for with no additional cost.
    C. Whether the Tribunal should reduce the service charge relating to the cost of parking security fobs which the Applicant says were never received.

D. Whether the Tribunal should reduce the management fee element of the service charges.
E. Given the delay in the freeholder providing financial year 2021/22 accounts, please could the Tribunal advise on how costs recovered as a result of a ruling by the Tribunal, which are within the 18-month limitation period but still unknown to the Applicant, may be dealt with.

19. The Tribunal identified this as an application for a determination pursuant to s.27A Landlord and Tenant Act 1985 as to whether the service charges in question were payable.

20. The Applicant also sought an order under Section 20C Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the landlord in connection with these proceedings before the First-tier Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

21. The matter was subject to case management including the preparation of written statements of case and for supporting documents or evidence to be submitted. The Tribunal notified the parties that it considered that the application was suitable for determination on the papers provided by the parties and without a hearing. The parties were invited to request a hearing but neither party chose to do so.

22. The Respondent has opposed all of the applications referred to above.

23. The members of the Tribunal were originally due to consider this case as a paper determination on 19th April 2023. On 6th April 2023, the Respondent applied for permission to rely upon evidence which had not previously been submitted. The members of the Tribunal granted this permission on 18th April 2023, despite the Applicant's understandable objections to this, and made directions giving the Applicant permission to submit a further written reply. The paper determination meeting was initially postponed to 16th May 2023 and was further carried over to a final meeting on 23rd May 2023.

24. The members of the Tribunal have read the parties' various written submissions and documents, which were considered by way of virtual meetings held on 16th and 23rd May 2023 and conducted over Microsoft Teams.

Grounds of the main application

25. The Applicant's grounds of his application were set out in his statements of case and other written submissions. These formed the basis of the issues which the Tribunal had to decide. In summary, the grounds of the application were that:-
    a. The actions and inactions of the freeholders/managing agents in dealing with accounting issues for the communal electricity supply led to delays in negotiating the new fixed term electricity contracts,

resulting in higher costs, which the freeholders/managing agents should refund to the leaseholders.

b. The actions and inactions of the freeholders/managing agents in dealing with accounting issues for the communal electricity supply led to improper demands for service charges on 23rd August 2021 and the leaseholders should be repaid the interest on that amount up to the date it was credited back.
c. Failure to comply with the Respondents' repairing obligations with respect to the Heat Pumps and the Common Heating System resulted in additional or wasted costs incurred by the Respondent or its agents, such that the service charges should be reduced on the basis that the costs were not reasonably incurred and/or the service provided/works undertaken were not of a reasonable standard.
d. Failure to comply with the Respondents' repairing obligations with respect to the Heat Pumps and the Common Heating System also resulted in loss and damage to the Applicant, such that the service charges should be reduced by way of set-off of the compensation payable to the Applicant.
e. The Tribunal should direct the reallocation of funds back into the main service charge budget which are currently ringfenced for the replacement of a heat pump.
f. Total failure of the service provided/works undertaken of installing the individual energy meters to each flat means that the service charges should be reduced on the basis that the costs were not reasonably incurred and/or the service provided/works undertaken were not of a reasonable standard.
g. Failure of the service provided of supplying entry fobs means that the service charges should be reduced on the basis that the costs were not reasonably incurred and/or the service provided was not of a reasonable standard.
h. In all the circumstances described above, the service charges should be reduced on the basis that the management service provided was not of a reasonable standard.
i. The Tribunal should advise on how costs recovered as a result of a ruling by the Tribunal, which are within the 18-month limitation period but still unknown to the Applicant, may be dealt with.
j. It was accordingly, in light of all of the above, just and equitable to preclude the Respondent from recovering its legal costs relating to the application through the service charge.

26. In response, the Respondent made the following key submissions:-

- The Respondent avers that in all the circumstances, the service charges demanded were reasonably incurred and demanded in accordance with the Underlease.
- The disputed costs were reasonably incurred at the time that they were incurred, such that the Tribunal should not find that any lesser sum was payable, and in particular the Tribunal should look at the reasonableness of the landlord's response rather than the

reasonableness of the landlord's prior conduct which then prompted the need for that response.

- Under s.27A Landlord and Tenant Act 1985, the Tribunal can only decide whether a service charge is or was payable and does not have free-standing jurisdiction to award damages, or to order repayment of any service charge sum by anyone or to anyone.
- The accounting issues which arose with the communal electricity supply were largely the fault of Engie's intransigence in its communications with the Respondent's new managing agent, and partly the fault of Bradley Hall's management of the account. It was suggested that Zenith and Trinity had both done all that they could to rectify a difficult situation and it was understandable that this would take some time so that they could apply proper accounting procedures.
- The increased "out of contract" rates arose again from Engie's refusal to renew the contract because of the historic issues, which was outside of the Respondent's control. It was indicated that once the account was rectified, the Respondent's agents acted as quickly as possible to negotiate a backdated contract on the most favourable commercially available terms and thus securing a rebate worth approximately £10,000.
- The Applicant has failed to provide like for like comparisons regarding the electricity contract(s).
- Zenith ensured that an annual service contract was in place for the Common Heating System which included 6-monthly servicing and weekly checks.
- The Common Heating System was subject to a series of failures to different components in a short period of time. Zenith had acted reasonably in trying to carry out repairs to each component and only resort to a complete overhaul once it became clear that this strategy was not working.
- Certain of the delays to the works to replace a compressor unit in one of the Heat Pumps resulted from the need to comply with Section 20 consultation requirements.
- The Respondent avers that the Common Heating System can function using only 4 out of the 5 Heat Pumps, and that the Applicant has failed to provide any evidence that the interim works carried out (or not carried out, as the case may be) had contributed to the failure of the compressor, resulted in additional repair costs, or increased running costs.
- The Respondent noted that the individual energy meters were not functioning correctly and a quote had been obtained for a contractor to investigate the cause, but since the meters have nonetheless been installed the Respondent asserted that the leaseholders were obliged to contribute both to the installation costs and the investigative/remedial costs.
- The parking fobs were ordered due to repairs undertaken to broken car park shutters. The cost included programming the fobs as well as purchasing them. Surplus numbers were purchased to ensure that spares were available and also due to bulk ordering. The Respondent appeared to admit that some of the fobs had not yet been provided to

Trinity by Zenith. The Respondent also asserted that although most of the fobs related to parking spaces, some were also for the use of other residents for general access to secure areas. The costs are in any event payable in the 1/85th proportion regardless.

- The Respondent asserted that Zenith and Trinity had actively managed the estate and provided the services for which they were contracted, disputing that there had been any mismanagement.
- The Respondent asserted that it was not just or equitable to grant a Section 20C order or refund the application fee, describing the application as lacking merit and being misconceived.

Relevant Law

27. The relevant sections of the Landlord and Tenant Act 1985 read as follows:-

19 Limitation of service charges: reasonableness
(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

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

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

and the amount payable shall be limited accordingly.

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

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.

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.

Evidence

28. The parties relied on their respective statements of case and accompanying documents.

Determination

Are the freeholders/managing agents liable for recompense for the additional costs incurred by the leaseholders on being placed onto a higher tariff?

29. The First-tier Tribunal (Property Chamber) has no free-standing jurisdiction to award compensation in favour of a leaseholder under s.27A, even where there has been mismanagement of the scheme by the landlord or their agent. The Tribunal would have to transfer part of the proceedings to the County Court. Since the coming into force of the Crime and Courts Act 2013, Judges of the First-tier Tribunal (Property Chamber) are also simultaneously empowered to sit as District Judges of the County Court, subject to operational deployment by the senior judiciary. There are increasingly procedures in place which enable the Tribunal to determine claims which would ordinarily be within the jurisdiction of the County Court, so that the same Tribunal Judge can consider both elements of the dispute as efficiently as possible and without the need for a dispute to be partitioned and dealt with separately under different procedures and by different Judges. The Tribunal considered whether it ought to do so in this case. However, for reasons set out below, this would have been futile in any event in relation to this element of the dispute.

30. The Tribunal also has jurisdiction to take account of a party's right to equitable set-off as part of determining whether service charges are "payable". To grant this relief, there must be a clear breach of the lease obligations by the landlord/agent which is so closely connected to the disputed service charges that it would be unjust not to offset the damages which would be payable to

the leaseholder (*Continental Properties v White* [2007] L&TR 4 (LRX/65/2005)).

31. In this instance, although the leaseholder alleges that the various management companies did not manage the scheme well, there is no actual breach of the Underlease covenants which is identified or alleged. The obligation of the Respondent in the Underlease is to procure the supply of electricity, not to obtain the most favourable rates possible. Poor management is usually penalised through a reduction of any management charges (which is discussed later in this Decision).

32. Much of the parties' written submissions were given over to the time taken for Zenith to transfer the account into the Respondent's name, and the time taken to credit back the deficit demand of 23rd August 2021 in the sum of £1,177.21 – but the costs arising directly from these elements are not in fact in dispute (they merely comprise an extended context to the actual dispute).

33. The "additional" charges of £20,614 seem to have arisen indirectly from the initial time taken to transfer the account to the landlord, followed by a continuing dispute between Engie and Zenith regarding both the credit notes and some other alleged unpaid debts. The extent to which Zenith could have resolved this dispute sooner is unclear as the parties take opposing views, a large part of the blame does seem to lie with Engie's oftentimes unreasonable conduct, and there has not been a detailed exploration of the issues in oral evidence.

34. The Tribunal does not agree with the Respondent's assertion that the contract novation could have been resolved as early as November/December 2019. It does appear that there was some poor financial management during 2021 which was only exposed by robust resistance from a group of leaseholders, and it is also suggested that the calibre of management was instrumental in the replacement of Zenith by Trinity at the end of the contract term. However, as discussed below, the fact that the 2021/22 fixed contract could be backdated to October 2021, rather than December 2021 (which is when a 12 month deal agreed in December 2020 would have expired) might ironically have saved the leaseholders some costs in the short run. The Tribunal has considerable sympathy with the Applicant's frustration, but this element of the Applicant's case is not proved.

35. The further "additional" charges of £33,128 from October 2021 to October 2022 are even more remote. The Tribunal takes judicial notice that from the summer of 2021 onwards, consumer energy prices started to climb at an exponential rate. The cause of the increase in prices was due to prevailing economic circumstances and fluctuations in the UK/global energy market. The Applicant's complaint appears to be that if a different deal had been secured then this would have resulted in lower charges overall. The Tribunal is not persuaded by that logic in this instance. If Zenith had secured a 12-month contract in December 2020, as the Applicant would have wanted, then it might not have been possible to backdate the commencement of a later contract to October 2021 and it might therefore have actually resulted in higher charges over the lifetime of the later contract. A deal entered into for a

different period would have involved a different tariff and it is difficult to speculate on what that cost would have been. Again, this element is not proved.

Are the leaseholders entitled to interest on the additional charges for electricity invoiced to the leaseholders which hasn't been credited to their accounts (which we believe to be at the statutory base rate + 8% accrued since the date each individual paid)?

36. This is not a remedy which the Tribunal could grant, and in any case the credits have since been applied.

Should the freeholder/managing agent be responsible for additional avoidable costs due to alleged failure to maintain and/or properly repair the Common Heating System?

37. Considering all of the evidence of the parties, the conclusion of the Tribunal on this issue was that the costs were reasonably incurred and that the works carried out and/or service provided were of a reasonable standard. The Respondent was required to keep the Common Heating System and Heat Pumps in repair and it appears that the works and servicing undertaken were done with that objective in mind. There is no evidence that the repairs were in and of themselves done to a poor standard or could have been undertaken at significantly less expense at the time. The Tribunal also agrees that it is appropriate for a prudent landlord/agent to make reasonable attempts to carry out repairs before engaging in more expensive replacement works. Nor is it relevant that the cost of the repairs may have increased in comparison to the costs that would have been incurred if the components had been adequately maintained or repaired beforehand. The fact that the repairs arose and/or became more expensive due to landlord's neglect is instead relevant to the issue of equitable set-off, which is discussed below.

Is there a case for compensation to the leaseholders as they have gone through the majority of two winters without heating? / Whether the Tribunal could direct the reallocation of funds back into the main service charge budget which are currently ringfenced for the replacement of a heat pump.

38. As discussed earlier in this Decision, the Tribunal can take account of a leaseholder's right of equitable set-off when determining whether a service charge is payable, and if so then how much.

39. The Tribunal noted that there was a paucity of evidence from the Respondent regarding the maintenance schedule which was asserted it had in place. The Tribunal also takes note that the Respondent only asserted that Zenith and Trinity had actively managed the Building. Given the issues with the management of the electricity account, the Tribunal finds that the maintenance of the Common Heating System and Heat Pumps under Bradley Hall is likely to have been inadequate. The Tribunal also notes that Zenith appears not to have conducted a proper assessment of the condition of the Heat Pumps until the heating failures started in February 2021. The Tribunal consider this to have been too long an antecedent period without proper

maintenance. However, without detailed evidence from a mechanical engineer being supplied directly to the Tribunal, it is difficult to infer what proportion of the resulting costs could have been avoided if action had been taken more promptly. The Tribunal notes that the Applicant provides evidence of discussions which took place with North East Fire Protection in June 2021, but this evidence is hearsay which has not been tested in oral evidence, so must be approached with some caution.

40. The Tribunal also considers that having the Common Heating System running on backup processes from February 2021 to at least February 2022 is very poor. The Tribunal notes that repairs were still outstanding to the fifth of the Heat Pumps as at 5th May 2023, according to the Applicant. Self-evidently, the Common Heating System has thus been in a state of constant disrepair from 2nd June 2021 at the very latest, until now, even if it has managed to provide adequate functionality for much of that time.

41. The ordinary standard of repair is to carry out such works as are needed to put premises back into repair once a defect has arisen and to do so within a reasonable period of time. Such repairs are more likely to arise where components are not proactively subjected to a proper maintenance regime, but the key issue is whether the repairs were executed effectively within a reasonable timescale once the defect became apparent. The Tribunal does not accept that the need to comply with Section 20 consultations is a viable excuse for the delay in this case, since a Section 20 consultation can be concluded in a little over two months if the landlord acts with alacrity, and if the situation is urgent then it is open to the landlord to seek dispensation from the Tribunal (even after carrying out the works, if absolutely necessary). The Respondent has at all material times had the benefit of instructing professional leasehold managing agents who ought to know this. No adequate explanation has been offered as to the reasons for the gaps in time between the various stages of consultation, nor indeed why the repairs are still outstanding.

42. Of course, it does not automatically follow that attempting a repair is the wrong thing to do even if the costs of the repairs end up being more than the eventual costs of replacement – the Tribunal will not judge the actions of the Respondent with the benefit of hindsight in that regard. However, overall, the failure of the Common Heating System from 5th February 2021 to 26th March 2021, between 9th April 2021 / 2nd June 2021 and 17th December 2021, and 7th January 2022 to 22nd February 2022, coupled with the inability of the various interim repairs to different system components to prevent an eventual wholesale system failure, speaks for itself.

43. The Applicant asserts that the Respondent's agents were influenced in their decision-making by the limited service charge reserves and the requirement of its contractors to receive payment on account before commencing works. Again, these are inadequate reasons for delaying the carrying out of suitable works of repair or replacement, since arrangements could be made for the Respondent to borrow the sums needed and recover the interest costs by way of service charge until the reserves can be replenished and the loan repaid.

Indeed, this is a course of action to which the Respondent's agents eventually tried to resort.

44. Accordingly, the Tribunal is satisfied that the Respondent was, and still is, in breach of its obligations in the Underlease in that it failed to keep the Common Heating System in a good and substantial state of repair contrary to Paragraph 3 of the Sixth Schedule to the Underlease.

45. The Tribunal is also satisfied that the Applicant thereby suffered loss and diminution of the value and enjoyment of the Property. The Tribunal has no doubt that the Applicant will have endured living in sometimes freezing conditions during the winter of 2021/2022 at least, as a heating system circulating temperature of 40°C will not have been effective to provide adequate underfloor space heating to a residential property in cold weather. The Tribunal is also satisfied that but for the Respondent's breach of covenant, the Respondent would not have incurred additional electricity costs for the period when the Heat Pumps were switched over to the immersion heating backup process, and that this has resulted in additional costs falling to be paid by the Applicant through service charges.

46. The Tribunal considers that it would be unjust not to offset the damages which would be payable to the Applicant, and so makes the following findings in relation to the sums claimed by him:-

    A. A 1/85th share of allegedly ineffective repair work charged to leaseholders – Total cost £43,818 (Applicant's share £515.51). The Tribunal does not find that the Applicant would be entitled to set-off for these figures, since it is difficult to establish the point at which the attempted running repairs became futile without more specific evidence.

    B. Reallocation of funds back into the main budget which are currently ringfenced for the replacement of a heat pump – Ringfenced funds = £23,000 (Applicant's share = £270.59); or the cost of a replacement pump to be funded by the Respondent. The Tribunal does not have jurisdiction to make orders in those terms.

    C. Recompense for enduring freezing temperatures without heating over two successive winters – the Applicant seeks the Tribunal's direction. The Tribunal finds that the Applicant would be entitled to equitable set-off in relation to general damages and assesses the value of the same at £250 for the aggregate of the periods in question.

    D. Higher running costs due to failure of the Heat Pumps. Total cost estimated to be £18,200 (Applicant's share = £214.12). For the reasons set out above, the Tribunal finds in the Applicant's favour in full on this sum.

47. The Tribunal finds that the Applicant is entitled to equitable set-off in respect of a total sum of £464.12, and the Tribunal therefore determines that this amount of the service charges demanded was not payable by the Applicant.

    Whether the Tribunal should reduce the service charge relating to the cost of parking security fobs which the Applicant says were never received.

48. The Tribunal finds that the costs incurred by the Respondent were reasonably incurred and that the service provided was of a reasonable standard. Obtaining a number of spare fobs would be a sensible management decision. The Tribunal also appreciates that a corporate customer might need to place a minimum order of units per batch, and so due to the fobs being ordered in a series of batches it may well have been unavoidable that an excess number was obtained. Whilst it might have been possible to obtain some of these more cheaply by ordering from online retailers, the Respondent has asserted that the costs included the process of programming the fobs, which would not necessarily be provided by an online retailer, such that this is not necessarily a fair comparison.

    Whether the Tribunal could direct either a refund of the amount charged to the Applicant for the individual metering service not received, or alternatively prompt provision of the service originally paid for with no additional cost.

49. The Tribunal concludes that although the costs were reasonably incurred in principle (inasmuch as the meters were at least installed), the services/works were patently not of a reasonable standard. The units appear to have malfunctioned and be useless unless and until the fault can be identified. Although this cost will inevitably fall upon the Respondent in the first instance, that is a matter which the Respondent will have to take up with whomever is found to be to blame for the fault. The Tribunal determines that the service charge payable by the Applicant should be reduced by 1/85th of £4237 (£49.85), being the additional costs incurred by the Respondent in establishing the cause of the fault.

    Whether the Tribunal should reduce the management fee element of the service charges.

50. It appears that Zenith inherited a poorly managed scheme from Bradley Hall. After initially making a concerted effort in April 2019 and late 2019/early 2020 to resolve the electricity account debacle, there followed a long period of apparently passive management of the electricity account from June 2020 to autumn 2021 and which may well have led to the replacement of the agent by Trinity. The period of more passive management required the leaseholders to intervene vociferously in order to prevent overcharging of utility bills and obtain the reimbursement to which they were entitled.

51. Additionally, Zenith appear to have been caught off-guard in relation to the failure of the Common Heating System. Trinity seem to have managed the Building more competently since April 2022 and have both resolved the original electricity dispute and commissioned the Section 20 process for the

works to the Heat Pump(s), although the Section 20 process has taken an inexplicably long time.

52. Against this, the Tribunal are satisfied that the Respondent's various agents will have undertaken a wider variety of management duties without adverse incident, and there is no evidence that the management fees are inherently more expensive than could reasonably be obtained elsewhere.

53. Overall, the Tribunal determines that the service charge payable by the Applicant should be reduced by £147.48, notionally representing a 25% reduction in respect of Zenith's management costs over 3 years.

    Given the delay in the freeholder providing financial year 2021/22 accounts, please could the Tribunal advise on how costs recovered as a result of a ruling by the Tribunal, which are within the 18-month limitation period but still unknown to the Applicant, may be dealt with.

54. It is not the role of the Tribunal to advise the Applicant. The Applicant has chosen to raise the issue of Section 20B of the Landlord and Tenant Act 1985 at the eleventh hour and without the Respondent having a proper opportunity to reply. It would result in unacceptable delay and disproportionate cost to adjourn the matter further for the Respondent to make submissions on this point. The Tribunal declines to make any ruling on this issue.

55. The Tribunal has only reached a determination that certain disputed service charges were not payable. The Tribunal expressly leaves open, and undecided, the issue of whether the remainder of the service charges demanded were or were not payable.

    Summary of disallowed costs

56. To summarise, the Tribunal determines that of the service charges demanded by the Respondent from the Applicant, the following amount was not payable:-

Equitable set-off (breach of lease)	£464.12
Faulty individual meters	£49.85
Management costs	£147.48
TOTAL	**£661.45**

    Is it just and equitable to preclude the Respondent from recovering its legal costs relating to the application through the service charge?

57. Subject to any particular considerations of an individual case, the Tribunal will usually hold that it is just and equitable to grant a leaseholder's application under Section 20C Landlord and Tenant Act 1985 if the leaseholder is substantially successful in their main application.

58. Although the Applicant has only succeeded in reducing the service charges payable by a relatively low proportion of the total sums in dispute, the

Tribunal notes that it appears to have taken a concerted effort on the Applicant's part, including the commencement of these proceedings, to flush out the real issues which the Respondent had faced. The Tribunal does not agree with the Respondent's assertion that the Applicant had already received all of the information which it advanced in defence of its position. The late submission of the witness statement of Mr Christopher Tomkins, exhibiting emails and information from James Cooper which had clearly only been obtained a matter of days beforehand, is the most striking example of this. The Tribunal was also concerned that the Respondent adduced that evidence at a very late stage in the proceedings, which resulted in considerable disruption to the Tribunal's management of the case.

59. The Tribunal notes that the Applicant began his application in September 2021, at what objectively speaking was the low point in the dispute when the Common Heating System had been badly malfunctioning for several months and there was no sign of a rebate of the electricity overcharge. The Tribunal therefore concludes that the Applicant was forced to bring and continue these proceedings in order to obtain justice in this dispute. Although some elements of the Applicant's case were misguided inasmuch as he sought remedies which the Tribunal could not grant, the thrust of his case has resulted in findings that the Respondent was in breach of its repairing obligations and its appointed agents fell below the standards of management which would ordinarily be expected of them.

60. The Tribunal considered making a partial Section 20C order to reflect the Applicant's partial success on the amounts sought, but concluded that this would not fairly reflect the extent to which the Applicant had been left with no choice but to start these proceedings and continue them to a final determination in order to obtain the ruling in his favour to which he was entitled, given the Respondent's refusal to make any meaningful concessions in the Applicant's favour.

61. In all the circumstances, the Tribunal determines that it is just and equitable to make a Section 20C Order in respect of the entirety of the Respondent's costs incurred, or to be incurred, by the Respondent in connection with these proceedings viz. the Applicant.

62. Under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. For the same reasons set out above, the Tribunal considers that it is just and equitable to make an order requiring the Respondent to reimburse to the Applicant the whole of any HMCTS fee paid by him to commence these proceedings.

Tribunal Judge L. F. McLean
9th June 2023

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

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

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00CH/LSC/2022/0031**
Property	**:**	**Flat 68 Friars Wharf Apartments, Green Lane, Gateshead, Tyne and Wear, NE10 0QX**
Appellant	**:**	**Adriatic Land 5 Limited**
Respondent	**:**	**Paul Scott**
Type of application	**:**	**Permission to Appeal**
Tribunal member(s)	**:**	**Tribunal Judge L. F. McLean** **Tribunal Member Mrs S. Kendall**

DECISION

Decisions of the Tribunal

(4) The Tribunal has reviewed its Decision dated 9th June 2023 and sets aside the same. The Tribunal has re-made its Decision, enclosed herewith.

(5) The application for permission to appeal is refused.

REASONS

The application for permission to appeal

63. The Appellant seeks permission to appeal aspects of the decision of the Tribunal dated 9th June 2023, further particulars of which are provided below.

Procedure

64. Rule 53(1) of the Rules states that:

> *(1) On receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 3, whether to review the decision in accordance with rule 55.*

65. And Rule 55 states:

> *(1) The Tribunal may only undertake a review of a decision*
> *(a) pursuant to rule 53 (review on an application for permission to appeal); and*
> *(b) if it is satisfied that a ground of appeal is likely to be successful.*

66. A ground of appeal is likely to be successful if (inter alia) the decision shows that the Tribunal wrongly interpreted or wrongly applied the relevant law.

67. The Practice Direction of the Upper Tribunal (Lands Chamber), which came into force on 19 October 2020, provides that:

> "*Permission to appeal will be granted if the Tribunal considers that the proposed appeal has a realistic prospect of success, unless the sum or issue involved is so modest or unimportant that an appeal would be disproportionate. Permission may also be granted if the Tribunal considers there is some other good reason for an appeal.*"

Grounds of the application

68. The grounds on which the Appellant seeks permission to appeal are summarised in a helpfully drafted statement of the "Grounds of Appeal" submitted by the Appellant's solicitors on 11th July 2023. These are discussed in more detail below, but in the interests of brevity will not be reproduced in full here.

69. The two stated grounds of appeal are:-

A. "Ground 1: The FTT decision shows that the Tribunal wrongly applied or disregarded a relevant principle of valuation or other professional practice."

B. "Ground 2: The Tribunal took account of irrelevant considerations or failed to take into account of relevant considerations or evidence, or there was a substantial procedural defect."

Issues

Ground 1: The FTT decision shows that the Tribunal wrongly applied or disregarded a relevant principle of valuation or other professional practice

70. The Appellant's grounds of appeal on this issue are focused on paragraphs 38 and 46 of the Tribunal's Decision, in which the Tribunal found that the Respondent was entitled to equitable set-off as a result of the failure of the heating systems in the subject property over the majority of two successive winters. The value of the equitable set-off was assessed at £250.00 in general damages for the aggregate of the periods in question and an additional sum of £214.00 special damages representing the Respondent's share of the estimated sum of £18,200 associated with higher running costs due to the failure of the heat pumps.

71. The Appellant contends that these decisions were flawed because (1) there had been no evidence or expert evidence before the Tribunal to quantify the damages or increased running costs due to the heating pump failure, and (2) the Tribunal failed to provide an explanation as to how the sums awarded had been calculated or how the Tribunal found itself in a position where it could be satisfied as to the proper sum for damages and/or increased running costs.

72. The Tribunal disagrees with the Appellant's assertion that there had been no evidence before the Tribunal to quantify the general damages or increased running costs due to the heating pump failure.

73. It was patently common ground between the parties, from their respective statements of case and supporting documents, that the heating pumps had been inoperative for substantial periods of time during the winters of 2021 and 2022. In Mr Scott's Statement of Case, he twice described the temperatures during these periods as "freezing". This evidence was not challenged by the Respondent. The Tribunal considered that temperatures are indeed likely to be at or just above freezing during January and February and so the Tribunal accepted this evidence. The assessment of damages took into consideration the relatively short periods during which temperatures were likely to be excessively cold, and the absence of any more detailed evidence from Mr Scott as to the impact on his living conditions.

74. Mr Scott also referred in his pleadings to evidence of discussions which took place with North East Fire Protection in June 2021 where it was estimated that the running costs could increase by £30 per day. Although this evidence was hearsay, it was admissible pursuant to Section 1 of the Civil Evidence Act 1995. The Appellant did not advance any alternative figures or positive case of its own in that regard. The Tribunal noted that

the sum in question appeared to be a reasonable and modest estimate, considering that it related to the heating of an entire block of flats, and so the Tribunal accepted this evidence.

75. It is true to say that there was no independent expert evidence before the Tribunal regarding either of the above matters. However, it must be borne in mind that the First-tier Tribunal (Property Chamber) is itself an expert tribunal and is able to reach its own conclusions regarding technical matters which fall within its areas of expertise. Independent expert evidence is only required where the members of the Tribunal consider that the matters in issue fall outside of their professional expertise.

76. In reaching the assessment of £250 in relation to general damages and accepting Mr Scott's claim for £214 in relation to special damages, the members of the Tribunal applied their professional expertise and knowledge of residential and commercial landlord and tenant disrepair disputes.

77. The sum of £250 was a general assessment, applying the general valuation principles common to disrepair claims (*Wallace v Manchester City Council* [1998] 30 HLR 1111; *Earle v Charalambous* [2006] EWCA Civ 1090).

78. The sum of £214 was allowed on the basis of Mr Scott's hearsay evidence, which the Tribunal accepted.

79. For all of these reasons, the Tribunal concludes that this Ground of Appeal does not have any reasonable prospect of success.

<u>Ground 2: The Tribunal took account of irrelevant considerations or failed to take into account of relevant considerations or evidence, or there was a substantial procedural defect</u>

80. The Appellant's grounds of appeal on this issue are further divided into two unrelated elements – (1) the aforesaid decision to allow a reduction by way of set-off worth £214 (paragraph 39 of the Tribunal's Decision); and (2) the decision that the service charge payable by the Appellant should be reduced by £49.85, representing the additional costs incurred by the Respondent in establishing the cause of fault with the metering service (paragraph 49 of the Tribunal's Decision).

81. The first of these two issues substantially overlaps with the Appellant's first Ground of Appeal. The Appellant contends that the aforementioned hearsay evidence "should not have been taken into consideration by the Tribunal" and that "If required, expert evidence ought to have been directed."

82. The Tribunal disagrees with those assertions. As previously discussed, the evidence was admissible pursuant to s.1 Civil Evidence Act 1995. If the Appellant wished to test the evidence, it should have requested an oral

hearing rather than consenting to a paper determination. At the very least, the Appellant could have advanced a positive case of its own. Accordingly, the Tribunal did not err in having regard to the evidence despite it being hearsay. For the reasons already given earlier, the members of the Tribunal also did not err in relying on their own professional expertise rather than requiring independent expert evidence.

83. The Appellant further asserts that the Tribunal failed to take into consideration that no expert evidence had been filed by the Applicant as to the alleged disrepair and breach of lease by the Respondent and what difference it would have made to the running costs had earlier action been taken. Again, the Tribunal observes that it is itself an expert tribunal and the members of the Tribunal also did not err in relying on their own professional expertise rather than requiring independent expert evidence. From the substantial amount of documentary evidence submitted to the Tribunal, and as discussed earlier, it was patently common ground between the parties that the heating pumps had been inoperative for substantial periods of time from February 2021, and the Appellant tacitly admitted in its own written submissions that one of the five heat pumps was still not fully repaired. In the circumstances, the Tribunal concluded that the facts spoke for themselves and accordingly did not err in deciding both that the Appellant was in breach of covenant and that losses had arisen as a direct result.

84. For all of these reasons, the Tribunal concludes that this Ground of Appeal does not have any reasonable prospect of success in relation to the issues identified above.

85. Lastly, the Appellant refers to the Tribunal's finding at paragraph 49 that the service charge payable by the Appellant should be reduced by £49.85 "being" the additional costs incurred by the Respondent in establishing the cause of fault with the metering service. The Appellant points out that the sum in question solely concerns estimated sums not yet incurred or accounted for, and accordingly asserts that this should have been a matter for another forum or later application.

86. On this last point, the Appellant has correctly identified an error on the Tribunal's part, inasmuch as the Tribunal had mistakenly conflated future estimated costs with costs actually incurred. The Tribunal apologises for this oversight. The Tribunal considers that the appropriate course of action is to review the relevant paragraphs of the Decision.

87. The Tribunal reminds itself that the relevant legislation is Section 19 of the Landlord and Tenant Act 1985, which provides (so far as is relevant):-

19 Limitation of service charges: reasonableness

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

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

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

and the amount payable shall be limited accordingly.

88. The Tribunal has already noted that the meters do not function at all. It therefore cannot be said that the works/service were of a reasonable standard. As the costs are only recoverable if the work/service were of a reasonable standard, the Tribunal concludes that the apportioned cost of £77.65 is not payable at all. It would be self-evidently unreasonable for a leaseholder to pay in full for an entirely non-functional service, which was what the Appellant has sought, even if the Appellant might currently intend to effect repairs at some undetermined point in the future. Once the full costs of investigation and repair are known in due course, if the parties cannot agree on how much Mr Scott's contribution to such repair costs (if any) should be, then that issue can be determined by the Tribunal at the material time.

89. On reviewing the relevant paragraphs of the Decision, the Tribunal considers that its original reasoning was incorrect. Accordingly, the Tribunal sets aside its original Decision and re-makes it, in accordance with Sections 9(4) and 9(5) of the Tribunals, Courts and Enforcement Act 2007.

Conclusion

90. The Tribunal considered whether it should review the decision under Rule 55(1).

91. The Tribunal decided to review its Decision dated 9th June 2023 because it was satisfied that the Appellant's Second Ground of Appeal on the issues relating to paragraph 49 of the same was likely to be successful due to an error in its reasoning process. The Tribunal has set aside and re-made its decision and provided fresh reasons, which accompany this Decision on Permission to Appeal.

92. The Tribunal was not satisfied that either of the Grounds of Appeal was likely to be successful in relation to any other aspects of its Decision dated 9th June 2023.

93. Having now reviewed its Decision, the Tribunal does not consider that either of the Grounds for Appeal continue to have any reasonable prospect of success.

94. The application for permission to appeal is therefore refused.

95. The Tribunal having reached the aforementioned decisions without having given either party an opportunity to make representations beforehand, the Tribunal hereby gives notice (pursuant to Rule 55(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that either party may apply for this Decision to be set aside and to be reviewed again.

Name: **Date: 22nd August 2023**
Tribunal Judge L. F. McLean
Tribunal Member Mrs S. Kendall

Rights of appeal

7. By rule 53(4) 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.

8. If a party wishes to appeal this decision, then a written application for permission must be made to the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of its refusal of permission to appeal or refusal to admit the application for permission to appeal, or sent notice that permission has been granted only on limited grounds, to the applicant.

9. The application must be signed and dated and must state—
(a) the name and address of the applicant and, if represented,—
(i) the name and address of the applicant's representative; and
(ii) the professional capacity, if any, in which the applicant's representative acts;
(b) an address where documents for the applicant may be sent or delivered;
(c) details (including the full reference) of the decision challenged;
(d) the grounds of appeal on which the applicant relies;
(e) the name and address of each respondent; and
(f) whether the applicant wants the application to be dealt with at a hearing.

10. The applicant must provide with the application—
(a) a copy of—
(i) any written record of the decision being challenged;
(ii) any separate written statement of reasons for that decision;
(iii) the notice of refusal of permission to appeal or refusal to admit the application for permission to appeal from the other tribunal; and
(iv) any other document relied on in the application to the Tribunal; and
(b) the fee payable to the Tribunal.

11. If the applicant provides the application to the Tribunal later than the time required by paragraph (2) or by an extension of time allowed under The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 —
(a) the application must include a request for an extension of time and the reason why the application was not provided in time; and
(b) unless the Upper Tribunal extends time for the application, it must not admit the application.

12. If the First-tier Tribunal refused to admit the applicant's application for permission to appeal because the application for such permission or for a written statement of reasons was not made in time—
(a) the application to the Upper Tribunal must include the reason why the application to the First-tier Tribunal for permission to appeal or for a written statement of reasons, as the case may be, was not made in time; and
(b) the Upper Tribunal must only admit the application if the Tribunal considers that it is in the interests of justice for it to do so.

13. The applicant must send or deliver to the Upper Tribunal with the application for permission sufficient copies of the application and accompanying documents for service on the respondent.