FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case reference	**:**	CHI/43UK/LSC/2023/0162
County Court claim number	**:**	355MC658
Property	**:**	Flat 12, Pinewood House, Chaldon Road, Caterham CR3 6PA
Applicant	**:**	Pinewood House RTM Ltd
Representative	**:**	Errol Woodhouse (director)
Respondent	**:**	Mr Dominic George
Representative	**:**	Ms Doliveux of Counsel instructed by Bonallack & Bishop Solicitors
Type of application	**:**	Transferred Proceedings from County Court in relation to service charges and ancillary applications
Tribunal member(s)	**:**	Judge J Dobson Mr K Ridgeway MRICS Ms P Gravell M
Date of hearing	**:**	23rd February 2024
Date of Decision	**:**	3rd April 2024

DECISION

Summary of the Decision

1. **The Tribunal determines that the service charges demanded by the Applicant from the Respondent are not payable.**

Introduction

2. This case involves two demands for on account service charges, each in the sum of £485 and so with a combined total of £970. There are a limited number of relevant documents and essentially two elements of dispute –whether the demands themselves are valid and whether required documents were sent with the demands. There was no challenge to the reasonableness of the service charges demanded if the sums demanded were payable.

3. The case got somewhat out of hand as between the parties for not especially complicated issues and in relation to a modest sum. This Decision has regrettably failed to entirely tread a line between addressing the matters raised where necessary and not continuing a theme of being disproportionate to the sums in dispute, the nature of the parties approaches causing it to veer some way in to latter.

4. The County Court Order for the County Court elements is set out in a separate document. The Tribunal has not dealt with the costs applications made in respect of the Tribunal proceedings, for which it provides Directions below.

Background

5. The Applicant (company number 9861789) is a company limited by guarantee and was at the relevant times the management company for Pinewood House, Chaldon Road, Caterham, Surrey, CR3 6PA ("The Building"). The Respondent is the lessee of Flat 12, Pinewood House ("the Property"), having become so on 20th May 2016.

6. The Building is a detached building built in the period shortly before the Lease and comprising a commercial unit to the ground floor, a coffee shop, and sixteen residential flats above. The plan indicates it to be situated on a side road and that to the other side of the road is a public library. The impression given is that the Building is to the edge of the town centre. The Property is a second floor flat. Rayners Property Management ("Rayners") were appointed as managing agents to manage the Building in 2020, which is relevant to one of the demands which are the subject of these proceedings, and who appear to have written to the lessees to advise of their appointment [149].

7. The freeholder of the Building is Lambda GR Limited which acquired the freeholder pursuant to an assignment dated 9th August 2019, having formerly been another company and earlier than that JLAD Limited which developed the site. The freeholder company played no part in these proceedings.

8. The Building has been managed from 22nd March 2021 by Pinewood House Residents Limited, which is a right to manage company. In contrast, the Applicant, despite its name, is not a right to manage company. Mr Woodhouse, the Applicant's director and representative, explained in the hearing that it had been intended that the lessees would become members of the Applicant and take over management. That taking over of management has occurred but as members of the more recent company. As to why a separate company was set up is not known to the Tribunal and is not obviously relevant, although the advice of Rayners [98] appears to have been to adopt that approach.

9. The Respondent was the Chair of Pinewood House Residents Limited prior to management being taken over by that company as a right to manage company and remains at least a director of it now.

Procedural history

10. The original proceedings were issued in the County Court under Claim No. 355MC658 [89- 91]. Judgment was obtained by the Applicant in default [92- 93]. The Respondent made an application to set aside that judgment and also applied to strike out the claim. The former was granted by Order of Deputy District Judge Hall dated 13th June 2023 [93] and the latter was refused. The claim was subsequently transferred to the Tribunal by District Judge Keating by Order dated 2023 [S].

11. Tribunal Directions were given on 5th December 2023 [122- 127] in respect of the Tribunal proceedings and it was also said that for the purposes of the County Court issues, the proceedings were allocated to the small claims track, unsurprisingly in light of the level of the claim. The case was subsequently listed for final hearing. Matters became considerably more involved in the few days prior to that.

12. The Applicant failed to provide a bundle by 4pm 16th February 2024 as directed. The Applicant was reminded of the requirement on 19th February 2024. The Applicant then provided a PDF bundle totalling 166 pages but unsatisfactory, not providing all relevant documents, although also including more than one copy of some. A separate email was sent setting out what was said to be an index. In Directions dated 19th February 2024 it was determined that the bundle appeared adequate for a claim of such a relatively modest size and that the delay was not such as to prevent the hearing proceeding. An extension of time was given for the bundle. It is important to observe that at the time, the Tribunal identified that a bundle had been provided and appeared to have documents setting out the case of both sides, albeit with unnecessary duplication. Any other failings with the bundle contents were not apparent at that time. Where the Tribunal refers to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], with reference to PDF bundle page- numbering.

13. The Respondent provided a bundle of 91 pages termed the Defence bundle and it appears originally pre- dating the Applicant's bundle. The

Tribunal repeats the comments in the preceding paragraph. There is substantial duplication between this bundle and the Applicant's bundle- most notably in terms of pages the Lease and previous Tribunal decision. Where the Tribunal refers to specific pages from this bundle, the Tribunal does so by numbers in square brackets prefixed with "D" [D], with reference to PDF bundle page- numbering.

14. The Respondent applied by application dated 21st February 2024, for the case to be struck out due to the Applicant's failure to provide the bundle on time and/ or properly. The Respondent asserted that the Applicant had left out applications made by the Respondent, had amended exhibits produced by the Respondent and had not included any statement by the Applicant. The Respondent also stated that he objected to the bundle being considered. In the alternative, the Respondent wished the Tribunal to consider a bundle of documents submitted on behalf of the Respondent. The Respondent also relied on a long email dated 21st February 2024.

15. The Tribunal considered that could not be determined in advance of the final hearing date due to lack of available time and so, by Directions dated 22nd February 2024, listed the application to be hearing first on the final hearing date. The Tribunal urged that if either party wished to rely on any document omitted from the bundle, that be provided by 2pm that day, such that the parties could prepare taking account of any such document.

16. Later on 22nd February 2024, the Applicant offered to re- send a bundle but could not comply with that deadline. The Respondent objected to any later provision. The Respondent additionally provided a supplemental bundle, as it will be termed, containing the Defence bundle but also the Respondent's application to set aside judgment, the transfer Order of the Court and Tribunal Directions. Where the Tribunal refers to documents within that, it does so by number is in square brackets prefixed with an "S" [S].

17. In addition, the Respondent provided another bundle of 109 PDF pages containing applications by the Respondent pursuant to section 20C of the 1985 Act and paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The other documents were the Respondent's Response and statement of the Respondent, already within the Applicant's bundle and five exhibits which were also in the Applicant's bundle but with the original exhibit numbers. The Tribunal does not need to refer to that bundle at this time.

18. The Applicant did then send an amended bundle but unpaginated bundle that comprised 224 pages and included a witness statement from a lessee Mrs June Turner dated 22nd February 2024. The Respondent's representative said by email that he had not previously had sight of that. The Respondent objected to use of the further bundle. The Tribunal refers to any page numbering from that bundle in this Decision insofar as it needs to prefixed with an "A" [A].

19. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not quite refer to all documents in this Decision, it being unnecessary to do so. It should not be mistakenly assumed that the Tribunal has ignored any documents or pages of documents not referred to or left them out of account.

20. Regrettably and for reasons not apparent, certain documents or part of the various bundles have developed errors in being read as PDFs and cannot be viewed, hence perhaps a greater need than otherwise to refer to the various separate bundles mentioned above.

The jurisdiction of the Tribunal

21. The Tribunal has power to decide about all aspects of liability to pay service and administration charges in relation to residential properties and can interpret the lease where necessary to resolve disputes or uncertainties. The power arises from the provisions of the Landlord and Tenant Act 1985 ("the 1985 Act")

22. Service charge is in section 18 defined as an amount:

> "(1) (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management and
>
> (2) the whole or part of which varies or may vary according to the relevant costs."

23. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable (section 27A).

24. Section 19 provides that a service charge is only payable insofar as it is reasonably incurred and the services or works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable. In particular in relation to on account service charges, no more than a reasonable amount is payable.

25. The Tribunal may take into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

26. There are innumerable case authorities in respect of several and varied aspects of service charge disputes, but most have no obvious direct

relevance to the key issue in this dispute. In a number of case authorities, for example *Knapper v Francis* [2017] UKUT 003 (LC) (although in that case there were more specific points) it has been held that where service charges demanded were so demanded on account, the question is whether those demands were reasonable in the circumstances which existed at that date. It is for a landlord to demonstrate the reasonableness of any estimate on which the on-account demands are based where that is in dispute, see for example the case of *Wigmore Homes (UK) Ltd V Spembly Works Residents Association Ltd* [2018] UKUT 252 (LC). *Cos Services Ltd v Nicholson and another* [2017] UKUT 382 (LC) (and also earlier authorities such as *Carey Morgan v De Walden* [2013] UKUT 0134 (LC)) applies such that there is a two- part approach of considering whether the decision making was reasonable and whether the sum is reasonable.

27. It is also well established that a lessee's challenge to the reasonableness of a service charge (or administration charge) must be based on some evidence that the charge is unreasonable. Whilst the burden is on the landlord to prove reasonableness, the tenant cannot simply put the landlord to proof of its case. Rather the lessee must produce some evidence of unreasonableness before the lessor can be required to prove reasonableness (see for example *Schilling v Canary Riverside Development Ptd Limited* [2005] EW Lands LRX 26 2005 in relation to service charges).

28. The Tribunal need not discuss further matters related to reasonableness of service charges given that the Respondent's challenge is not advanced on that basis.

29. The more relevant matters in this instance are the statutory requirements which must be complied with before a service charge demand is payable. Those requirements are particularly found in sections 21B and 47 of the Landlord and Tenant Act 1987 ("the 1987 Act").

30. Section 21B subsections (1) to (4) require that a service charge demand is accompanied by a summary of tenant's rights and obligations, as follows:

> "(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
>
> (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
>
> (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
>
> (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service

charges do not have effect in relation to the period for which he so withholds it."

31. The wording of the summary has been prescribed.

32. Section 47 requires the following:

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

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

(b)if that address is not in England and Wales, an address in England and Wales at

which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

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

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

subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant."

33. The section requires that a demand includes the name and address of the landlord. If it does not contain the required information, the sum demanded is not payable until the information is provided.

34. However, Ms Doliveux accepted that where the demand is made by a management company demanding service charges in its own right, the requirement to provide the address of the landlord does not arise.

35. The Respondent's case also referred to section 20B(1) of the 1985 Act, which provides that if any of the relevant costs on which the service charge were based were incurred more than eighteen months before the demand for payment is served, that part of the service charge is not payable, save where the lessee had been informed that a demand would be made. The Tribunal does not identify the direct relevance of that to the circumstances of this case, no demands being referred to which post- date the costs by more than eighteen months, but in any event, nothing turns on it. The point may be relevant if the Applicant were to make a future demand for service charges for the period dealt with in this case but that is different to the claim brought and transferred.

The Lease

36. A copy of the original lease of the Property ("the Lease") was provided within the bundle [15 to 52]. The Lease is dated 20th May 2016.

37. The Lease is tri- partite, the contracting parties being the then freeholder, the Applicant and the Respondent, who was therefore the original lessee. The term of the lease is 125 years from 24th June 2015.

38. The over- whelming majority of the Lease in the usual sorts of terms and little of the specific provisions are relevant to this Decision.

39. The Service Charge payable by the Respondent is expressed to be a fair and reasonable proportion determined by the Applicant. Such clauses have been the subject of disputes, although the approach to be taken to them was clarified last year and so it might be hoped that the extent of such disputes might reduce. Nothing turns on that method of calculating the service charges in this case.

40. The Respondent covenanted to pay the service charges (paragraph 2.1 of Schedule 4) and to observe and perform his other covenants. More specifically and pursuant to paragraph 2.2 of Schedule 4, he agreed to pay the estimated service charge in equal instalments on the date of the Lease and on the rent days, of which the Lease provides for two each year, being 25th March and 29th September. He also agreed by paragraph 2.3 to pay the balance if the actual service charge exceeded the estimate. In the event of the actual service charge being lower than the estimate, the freeholder is to credit the excess against the next instalment.

41. That is one of a number of provisions where the different roles of the freeholder and the company might have been dealt with better. The Lease indicates that the service charges are payable to the freeholder, albeit demanded by the Applicant and relating to costs of services which the Applicant is required to provide.

42. Another is found in paragraph 3.1 of the same Schedule, where payment of a fair and reasonable contribution to the cost of insurance is payable by the Respondent as what is termed "Insurance Rent". The Lease treats that differently to other service charges. The sum is said to be payable to the Applicant and to be demanded by the Applicant but payable by a date in a notice by the freeholder.

43. In addition, it is the freeholder which is said to be able to employ managing agents- although how that is intended to fit with the Applicant as the management company is unclear. The Lease does not provide for the Applicant to be able to employ such agents, much as that would appear the logical intention.

44. The "Service Charge Year" is the annual accounting period relating to the "Services" and the "Service Costs" beginning on 29th September 2015 and each subsequent year during the term of the Lease and subject to the freeholder being able to change the date.

45. Schedule 6 is divided into three parts, each part relating to additional covenants by one of the three parties.

46. Part 2 paragraph 3.2, states:

> "3.2 Before or as soon as possible after the start of each Service Charge Year, the Company shall prepare and send the Tenant an estimate of the Service Costs for that Service Charge Year and a statement of the estimated Service Charge for that Service Charge Year"

47. Paragraph 3.3 requires the provision of a certificate showing the service costs and service charge for the Service Charge Year as soon as reasonably practicable after the end of that year and provides that the certificate shall accord with service charge accounts prepared which are to be audited by independent accountants. There are subsequent related paragraphs.

48. Schedule 7 refers to the services to be provided and which attract the service costs. As the reasonableness of the services charges is not in issue- and there is no argument that any part of the charges fell outside of chargeable items and so was not payable for that reason, it is not necessary to set out the provisions of this Schedule. It should be recorded that the reference to the freeholder employing managing agents is found in this Schedule as a cost for which Service Costs can be incurred, whereas for example the costs of accountants are those employed by the Applicant.

49. The Respondent also covenanted to pay on "a full indemnity" basis costs incurred "in connection with or in contemplation of" (a common form of expression of such a provision) the enforcement of any of the Respondent's covenants.

Decision of the Tribunal in 2020

50. The Respondent relied on a Decision of the Tribunal made by Judge Morrison (sitting alone and on the papers) dated 3rd September 2020 ("the 2020 Decision") [62- 82]. That related to service charge demands made by the Applicant of the Respondent and other lessees for the earlier service charge years 2017/18 and 2018/19. The Tribunal determined that the service charge demands for those years were not valid and the service charges were not payable.

51. It should be identified that the application in that instance had been made by a number of lessees and was responded to by the management company. Hence, where quotes from the 2020 Decision are cited below, the titles given to the parties do not accord with their titles in these proceedings.

52. The Respondent contended the 2020 Decision is binding on this Tribunal. Whilst nothing ultimately turns on the matter, the Tribunal does not accept that contention to be correct. It is right to say that the

Tribunal ought to have regard to and respect for another decision of the Tribunal and Judge Morrison was a very experienced Tribunal Judge. However, such a decision has no precedent value and the Tribunal is free to depart from it if it considers that appropriate in determining the service charges for the different period of time which now come before the Tribunal.

53. The Decision records that the current freeholder and the parties agreed that all service charges should be paid to the Applicant, at least in practical terms therefore avoiding the issues which might have arisen from the provisions mentioned above and indeed in the 2020 Decision. It also records the change in the service charge year to 1st April to 31st March. It merits recording that no issue arose in this case as to the correctness of the service charge year and hence the Tribunal infers that change in dates remains agreed.

54. The Tribunal notes the "enormous amount of time and effort" on behalf of the Respondent but also the "modest amounts for a small development". The documentation was relatively substantial set against those. Animosity between the parties was noted but also that it had nothing to do with service charges.

55. The 2020 Decision indicates that originally demands had lacked the name and address of the landlord. However, the demands were subsequently issued and then did so.

56. On the other hand, the demands were determined to still lack accompaniment by the summary of tenants' rights and obligations. The Applicant accepted that failing. The Tribunal specifically identified that as preventing the Respondent having to pay the service charges unless and until a demand were issues which was so accompanied.

57. In paragraph 44 onwards, it was also said that the Applicant had failed to send to the lessees;

> "an estimate of the Service Costs…and a statement of the Estimated Service Charge …"

and added that:

> "45. The requirement to provide an estimate is not a mere formality, and is a requirement found in many residential leases. If a lessee receives a demand to pay service charges in advance, he is entitled to be satisfied that he is not being asked to pay more than a reasonable amount: see section 19(2) of the Act.
> 46. None of these demands served by the Respondent mentions that the sum demanded is an estimate, or even describes the demands as on account, or interim, or as based on estimated costs."

58. The Applicant also accepted that failing.

59. The Judge therefore determined as follows:

"46..... It is therefore impossible to avoid the conclusion that the Applicants' covenant in the lease to pay the estimated service charge has not been triggered. The demands are not valid under the provisions of the lease and therefore cannot satisfy the requirements of a demand for the purposes of section 20B(1)."

60. It is apparent that the Judge reached her conclusion without enthusiasm, saying the following:

"49. The Tribunal is therefore reluctantly constrained to conclude that **the Applicants have no present liability to pay any of the service charges for 2017/18 or 2018/19**. The Respondent will doubtless consider this harsh, and will be right to do so. However, it is what the law requires. It is the unfortunate result of the Respondent seeking to manage Pinewood House without due regard to the provisions of the lease, the necessary legal knowledge, or the assistance of professional managing agents, and doing so in a situation where some lessees seek to find any reason for avoiding payment."

(Note: The highlighting appears in the original 2020 Decision.)

61. The last part sentence is hardly a ringing endorsement of the relevant lessees.

62. It is also notable that the Respondent and the lessees had challenged all of the elements of the service costs which had been demanded as service charges. If the Judge had determined the demands to be valid, almost all of those challenges would have failed. The Judge carefully considered the reasonableness of all of the elements of the service charges in case her decision was appealed and it was subsequently held that she was wrong about the validity point. The Tribunal allowed most of the elements of the charges in full, the reductions made being proportionately modest.

63. The Judge went on to say in her concluding paragraph the following:

"111. The Applicants, led by Mr George, may feel that they have been vindicated in their long-running battle with the Respondent and Mr Woodhouse. The Tribunal urges caution. The residents of a block of flats without a solvent or functioning management company may find themselves in real difficulty, both as regards day to day management and the marketability of their flats.

112. Nothing in this decision prevents lessees voluntarily making payments towards the 2017/18 and 2018/19 service charges."

64. That rather goes to emphasise her position that there were technical failings on the part of the Applicant considered to be in consequence of a lack of understanding of the requirements for making demands but rather than wider issues with the charges which would otherwise have been payable with only minor reductions. It is apparent that the Judge hoped those failings could be resolved.

65. All of that is interesting background and a significant part of the context in which the demands the subject of this case were made. It does not determine the answer to this case.

66. The Respondent also, it ought to be mentioned for completeness, referred to a decision of the Tribunal in 2018. However, that was not provided and so it is not clear as to the determinations made or on what basis. There is a brief mention in the 2020 Decision and it is apparent that the service charge determined for the first year following the Respondent acquiring the Property was reduced. Nothing turns on that.

67. The Tribunal notes that by letter 21st September 2020 [1], the Applicant wrote to the lessees of flats in the Building making reference to the 2020 Decision and asserting that the it found "the charges levelled to each leaseholder to be reasonable and fair and the management of the development acceptable". That is correct, although perhaps amounts to a somewhat optimistic take on the 2020 Decision as a whole, given no charges were found to be payable. The letter nevertheless explains that in consequence of the Decision, from which the Tribunal infers the Applicant meant the failure to comply with requirements, the Applicant had decided to appoint Rayners.

The Hearing

68. The hearing took place in person at Crawley Magistrates Court. The Applicant was represented by its director, Mr Errol Woodhouse. (For completeness, he was also a shareholder in and later became a director of JLAD Limited, the original freeholder and developer of the Building.) The Respondent was represented by Ms Doliveux of Counsel. The Respondent was present. His parents were present as observers.

69. Ms Doliveux produced a short Skeleton Argument dated 21st February 2024 summarising the Respondent's case and making various submissions.

70. The Tribunal first heard the Respondent's application to strike out the Applicant's substantive application. If the Respondent had succeeded, the effect would have been that the service charges would have been determined not to be payable for that reason and hence the County Court judgment would have followed that.

71. As explained below, the Tribunal dismissed the Respondent's application to strike out and so proceeded to hear the substantive case.

72. The Tribunal next dealt with the question of whether that would include the witness statement from a lessee Mrs June Turner. See further below.

73. Otherwise in terms of bundles, it was established that the documents in the 91- page bundle were contained in other bundles and Ms Doliveux

explained that with the exception of the statement of Mrs Turner, there were no documents new to the parties. There was mention that one set of demands contained attachments, whereas the other did not- the Applicant's and the Respondent's respectively- and other lesser matters.

74. It should be explained that the Respondent had referred to there being no witness statement from Mr Woodhouse, although the Applicant's amended bundle includes a document signed as one dated 19th July 2023. It was established that the document was a response ("the Response") to the Respondent's Defence and had been provided at the time, as the "Reply" directed by the Court. Mr Woodhouse said that he had followed the direction to provide that and provided the supporting documents at the same time.

75. That Response was therefore in the form of a witness statement rather than a statement of case, but the Tribunal found that unsurprising given the form of the Defence- see below. The document was most notable for exhibiting the demands and the supporting documents said to have been sent, which were given exhibit numbers, some of which had appeared in the original bundle with those numbers, such that some of the comments on behalf of the Respondent about the Applicant changing the exhibit details from that in the Respondent's case or the exhibits being different misunderstood the fact that the documents were those which had been exhibited by the Applicant in the July 2023 "Response".

76. There was a little confusion in the hearing as to whether the Tribunal was in receipt of the Respondent's Defence. That was notwithstanding the Defence bundle. The Tribunal established that it was [D2- 8]. The confusion had arisen because the document was written in the form of a witness statement by the legal executive conducting the case for the Respondent and the statement of truth referred to such. Only the title bar referred to "Defence".

77. Ms Dolivuex advanced initially but then withdrew a point that the Applicant may not have locus to bring the claim and that the right to manage company would have to. It was accepted in the event that the demands pre- dated the management by the right to manage company, whose claim it properly was. It was also sought on behalf of the Respondent to adduce new evidence after the lunch break from another director of the right to manage company but in the face of the Tribunal's indication that if that were to be admitted at all, the likelihood would be an adjournment of the remainder of the final hearing, that was not pursed. No more need be said about it.

78. The Tribunal heard oral evidence from Mr Woodhouse at some length in the course of extensive cross- examination by Ms Doliveux. As will be discerned from the findings below, the Tribunal found the evidence of Mr Woodhouse to be entirely credible and cogent.

79. The Tribunal also heard oral evidence from Mr George in response to rather more limited questioning.

80. In a nutshell, the Applicant's case was that the sums demanded of the Respondent on which the claim was based were due and payable: the Respondent's case was that for various reasons the demands were not valid demands and so the sums demanded were not due. That was firstly because of the forms of the demands themselves and secondly because it was said that documents required by either the Lease or by statute were not provided with the demands.

81. It merits stating that this Decision seeks to focus solely on the key issues. The omission to therefore refer to or make findings about every matter stated is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Various matters mentioned in the bundle or at the hearing do not require any finding to be made for the purpose of deciding the relevant issues in the case.

Respondent's application to strike out and separately whether the Applicant could rely on witness statement of June Turner

82. In relation to the Respondent's application, as it will be termed, the Tribunal dismissed that application. The Tribunal refused permission for the Applicant to rely on the further witness statement.

83. Before setting out the reasons in respect of the strike out application, the Tribunal addresses the references to an "application" by the Applicant. The Tribunal appreciates that the Applicant made no application to the Tribunal for any determination but rather the case found its way before the Tribunal because of the transfer by the County Court. However, it is more practical to adopt the term "application" to refer to the determination required by the Tribunal in respect of the Applicant's County Court claim because that is the term used in The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). It is the Rules which apply in determining the question of strike out.

84. The Respondent's application was made on 21st February 2024 and as an application to the Tribunal only. No application was made to the Court in respect of the Court proceedings.

85. As mentioned above, the principal written comments on behalf of the Respondent were contained in an email dated 21st February 2024. Those correctly noted that the index did not correlate with the bundle itself, there was not page numbering save for the PDF numbering, the Directions were missing and exhibits were no longer shown as exhibits to the Respondent's statement. There was no statement from the Applicant which could exhibit anything.

86. The Respondent's representatives added further comments in an email dated 22nd February 2024. That referred in particular to a different

bundle provided by the Applicant and including the statement of Mrs Turner mentioned above.

87. Ms Doliveux added oral submissions, referring to the over- riding objective of the Rules, including enabling the Tribunal to deal with the case fairly and justly and ensuring that the parties can participate and that they are on an equal footing. She suggested that Mr Woodhouse had omitted most of the key documents and that the Tribunal could not know that documents in different bundles were exactly the same.

88. Mr Woodhouse responded stating that he had not been well, that he had not been able to get into his office and that he had responded as best he could. He also argued that the Respondent's claim that the demands had not been properly sent was not credible.

89. The Tribunal agreed that the Applicant's approach to preparation of the bundle was very much unsatisfactory. It had issued the proceedings and it needed to ensure that those could be properly heard at the final hearing, ensuring that it took steps to make sure that the bundle could be provided. Representation by a director and not a professional could only go so far. There was no medical evidence to support illness and no notification of that or any consequent difficulty had been provided to the Tribunal.

90. However, the Tribunal particularly reminded itself that the claim was a small one, that the County Court would most likely have worked from the documents in the Court file as filed separately by the parties and unpaginated and that there was no suggestion that any significant document was not before the Tribunal or the parties. The Tribunal considered that it could work from the documents before it and so too could the parties, much as less smoothly than ought to have been the case. There was no document identifiable that the parties could not deal with.

91. The Tribunal also identified that the challenges brought by the Respondent were in respect of what the Tribunal will term "technical matters", albeit with considerable caution as that is an unsatisfactory term- to refer to legal requirements as "technical" is of doubtful appropriateness. The Tribunal considered that it had ample to be able to determine those challenges, not least allowing for the oral evidence and submissions to be heard.

92. Hence, the Tribunal concluded that the far better course was to proceed and to determine the case on its merits. The fact of various different bundles in the days before the hearing was undoubtedly unhelpful but not so unmanageable as to prevent the case being heard. The Respondent's applications in respect of costs could be dealt with following the substantive matters and the Tribunal could access the applications in the electronic case file. The ability to determine the case on its merits was by far the most weighty factor.

93. Hence, as identified above, the Respondent's application to strike out was dismissed.

94. The Tribunal indicated that, as it included at least the high majority of the relevant documents, the Tribunal would principally work from the 224 amended bundle, accepting that had been filed very late and after other bundles but simply out of practicality in the hearing for ease of finding pages.

95. As mentioned above, the Applicant had sent to the Respondent a further witness statement. That was described as the second statement of the witness, although no first statement was provided. Ms Turner was not present at the hearing and so could not be questioned.

96. Service the day before the hearing was substantially late as compared to the date required in the Directions. The Applicant had no entitlement to rely on the statement unless permission were to be granted.

97. The Applicant failed to provide any reason for the very late service of the statement and the failure to provide in accordance with the Directions. The Respondent objected, Ms Doliveux making a number of observations.

98. The Tribunal noted that the Response had stated that the Applicant had been provided with the demands sent to Mr and Mrs Turner and other lessees. However, no confirmation of that was provided from the lessees referred to. As mentioned above, the Applicant failed to provide any reason for the very late provision of the statement, the Respondent had little time to prepare in relation to it and in any event could not challenge the evidence of Mrs Turner by questioning when she was not present at the hearing, which would all else aside have significantly impacted on the weight the Tribunal could have given to the evidence. In any event, the indication given in oral submissions that Mrs Turner accepted receipt of relevant supporting documents with the service charge demands would not have assisted greatly in respect of the demands to the Respondent.

99. The Tribunal took no account of the contents of Mrs Turner's statement.

Findings of Fact, including evidence received

100. It is common ground that the service charges the subject of this case have not been paid and no finding was required in relation to that. A demand for service charges was issued by Rayners stated to be for the period 29th September 2020 to 24th March 2021 on 10th November 2020 [84 and also 93]. The demand referred to service charges for that period and demanded £485.00 for that. The Property was identified. The demand is addressed to the Respondent and one Mrs H Mitchell.

101. That demand did not provide details of the freeholder, i.e., the landlord. It did contain a notice pursuant to section 47 and 48 of the 1987 Act, stating the notice to be given by the Applicant and giving the registered office of the Applicant company, which the Claim Form indicates to be the address of accountants.

102. The demand states that it is a notice of rent due and refers to Section 166 Commonhold and Leasehold Reform Act 2002. That is the relevant provision in respect of a demand for ground rent or other rent. The Respondent asserted in a detailed statement of case termed "Respondent's Response" [3 to 10] that the demand was therefore one for rent and not for service charges.

103. The Tribunal has no doubt that the demand was made as a demand for service charges and not as a demand for rent. Further, the Tribunal considers that a reasonable recipient would identify the demand as a demand for service charges and would not be mislead into thinking the document to be a demand for ground rent.

104. The Tribunal finds both as a fact (and below as a matter of law) that the demand was a demand for service charges.

105. The Tribunal expresses some surprise, given that Rayners is a professional managing agent and likely to know the difference between ground rent and services charges, that a form of demand has been used which is designed to relate to ground rent and then had the service charge details added on, which has some potential to cause confusion. The Tribunal is surprised that Rayners did not, in contrast, proceed by making a demand which is more clearly a demand for service charges by omitting any other reference. However, what the Tribunal considers to be less than ideal practice is a matter taken account of in making the Tribunal's finding but not one fatal to the demand.

106. The Tribunal also finds that Mr Woodhouse did not cross out the bank account details which appeared at the bottom of the copy of the Rayner's demand in the Defence bundle [D82] and that the bank details were for Rayner's account, accepting the evidence of Mr Woodhouse about that. As he stated, there would be no logic to him having crossed out those details where he wished payment to be made. The Tribunal also found that he could not have done so on the document received by the Respondent, which the Tribunal accepted was sent by Rayners and not by Mr Woodhouse, at first blush rendering it somewhat difficult for Mr Woodhouse to have crossed out the details.

107. The Tribunal is far from clear that the bank details were crossed out at all as opposed to having been highlighted and that affecting how they came out on the copy within the bundle. The Tribunal is very cautious in making any positive suggestion as to how any crossing out came about on the Respondent's copy if there was crossing out rather than highlighting. All else aside, there was no- one present from Rayners to ask about the matter. The Tribunal considers that there is no need to

make any specific finding on those matters, and that it lacks sufficient evidence on which to do so. The Tribunal declines to make any finding.

108. The Tribunal finds that the demand gave a period of two- quarters to which it was said to relate. The demand stated, "service charge due" and "29/09/2020-24/03/2021". The demand is not described as an estimated or on- account demand.

109. Whilst Mr Woodhouse was unable to provide specific evidence that the demand had been sent by post, as he understood it had, he was correct to say that there was no dispute that the demand was served, the issue being what was sent with it, with which any proof of postage may well not have assisted.

110. A different form of demand was served on 30th November 2020 by the Applicant itself (specifically by Mr Woodhouse) for the period 25th March 2020 to 28th September 2020. The sum is again £485.00, and the addressees are the same. At the bottom of the demand, mention is made of a covering letter. Mr Woodhouse did not accept there to be an issue with provision of details of his as opposed to the Applicant, on the basis he is the sole director and responsible for the bank account, although he conceded the address shown was not the registered address of the Applicant.

111. Mr Woodhouse stated, and the Tribunal accepted, that the covering letter gave other details and included the bank account for the Applicant. However, if payment was to be made by cheque, the cheque was to be sent to his address.

112. Ms Doliveux not unsurprisingly queried with Mr Woodhouse the fact that the later demand, but which related to the earlier period, was not also served by Rayners. The Tribunal accepts Mr Woodhouse' explanation that Rayners were content to serve a demand for a period in which they were managing the Building, but not for a period prior to that.

113. The Tribunal also accepts the evidence of Mr Woodhouse that he did not serve the demand for the earlier period whilst the proceedings in 2020 were ongoing and until after receipt of the 2020 Decision, although he had prepared it in March 2020 in time for when it would normally have been served. That appeared a likely and logical approach and no other explanation was suggested by the Respondent.

114. The Tribunal records that Mr Woodhouse stated that this demand was served by post and by email. Mr George could not recall receipt of an emailed copy. There was no copy of the email provided. The email might have assisted in indicating the documents attached to it, or not attached as the case may have been, dependent upon there had been one attachment or bundle of attachments or a number of individually identified attachments. The Tribunal determined that the lack of provision of the email by Mr Woodhouse as a lay person should not be

read more widely and declined to draw any inference against Mr Woodhouse or the Applicant's case. In the event, the Tribunal was not assisted one way or the other (although if meeting the burden of proof had rested on this in particular, it would have been the Applicant which would have failed to do so).

115. The Tribunal noted the reason given by the Applicant for the appointment of Rayners in the 21st September 2020 letter as being:

> "due to the plexities of property management…….. I have decided that an Independent Management Company should be appointed and as such I have engaged the services of a very experienced property management company……. a founding member of ARMA Association of Residential Management Agents, to take over the ongoing management of the development."

116. The Tribunal has no reason to doubt the correctness of the reason given by the Applicant back in 2020, which was one reasonable response to the 2020 Decision then just received. The Tribunal finds that the appointment process was sufficient for Rayners to have been appointed and that Lambda either explicitly or implicitly agreed to the appointment, albeit that Mr Woodhouse took the actual steps.

117. The Tribunal accepts the evidence of Mr Woodhouse that he believed- and indeed may well have continued to believe until receipt of this Decision- that the demand served by Rayners was valid. It merits recording for the avoidance of doubt that the Respondent understandably did not assert that the Applicant knew that the demands were invalid at the time of service or that the Respondent otherwise knew what was going through Mr Woodhouse' mind.

118. The Tribunal has no difficulty accepting that having instructed what he believed to be experienced managing agents, Mr Woodhouse also believed that they would serve correct and valid notices. It is implausible that an agent would be instructed which was expected to fail to serve valid notices. It is reasonable to rely on the expertise and experience of the professional agent.

119. Turning back to the later demand but for the earlier period, that cites the same provision as the Rayners demand. There is again an attempt to give notice of the address of the landlord/ the Applicant. That refers to the address at the top of the demand, which is the personal address of Mr Woodhouse. There is no reference to the registered office address of the Applicant company, or any basis identified as to why the particular address has been used. The Tribunal finds that the incorrect details on the second demand would have caused no issue with payments being received and properly processed, if the Respondent had paid them.

120. The principal dispute between the oral evidence of the parties related to the documents accompanying the demands, or indeed lack of such documentation. The Respondent asserted that the Applicant had again

failed to provide the required estimates and had also failed to comply with the statutory requirements.

121. The Tribunal found as a fact on the balance of probabilities that the notices served by the Applicant on the Respondent were accompanied by estimates and were accompanied by a summary of tenant's rights and obligations. The Respondent relied in particular on the asserted lack of estimates- he said the demand were "predominantly" not due for that reason.

122. In doing so, the Tribunal accepted the oral evidence of Mr Woodhouse, which it found to be credible and cogent in the face of detailed cross-examination. The Tribunal preferred that evidence to the oral evidence of Mr George in which he denied the notices being so accompanied.

123. The Tribunal identified that in the bundle [95 and e.g. 163] there were what were described as budgets for the service costs for the Building. The Rayners demand was followed in the bundle by an information document, firstly referring to "How to Pay" but then moving on to cover other matters [96]. The next document is the summary of tenants' rights and obligations [97]. The Response asserted those were all sent with the demand. That did not of itself of course mean that those documents had necessarily been sent with the demand.

124. The Tribunal noted that the budget gave an overall sum for costs on what was said to be an interim basis and the figures were described as being the annual forecast. The Tribunal found it to be sufficiently clear that it is an estimate. The budget gave as the bottom row of three columns of figures and a column of descriptions £485 being what was described as the "Half yearly sum due". However, the Tribunal found no indication as to the period to which the budget related, including whether that was the whole service charge year or some other period. Strictly speaking, the budget did not indicate which service charge year (or part of one) it related to. That said, the Tribunal considered that the demand made it sufficiently clear that the demand was for some of or all of the service charge year which incorporated the period specifically shown on the demand that a lessee was likely to identify that year.

125. The summary of rights referred to administration charges in its header and not to service charges. The Tribunal finds that a lessee would probably not identify the distinction between service charges and the administration charges described and would have been likely, if he or she read the summary, to focus on the rights set out.

126. The bundle indicates that the demand by Mr Woodhouse was accompanied by a summary of rights in a different form [162] to that said to have been sent by Rayners and the estimate is different to that said to have accompanied the Rayners' demand. Mr Woodhouse explained, and the Tribunal accepted, that the budget served by the Applicant reflected the expectation at the start of the accounting year when the demand was prepared, whereas that provided by the Rayners

was updated to the estimated position later in the service charge year. The Response asserted that the relevant documents were all also sent with that demand.

127. Mr Woodhouse was very definite in his evidence that he provided such an estimate and such a summary. The Tribunal found that Mr Woodhouse most likely found a precedent form of summary of rights and obligations, of which there are plenty available. There is nothing to suggest that he might have used a different form or have provided a different estimate as any deliberate device.

128. Mr Woodhouse could not say for certain that Rayners had provided the documents to Mr George, which he candidly conceded, but Mr George was also definite that the estimate summary had not been provided by Mr Woodhouse and the Tribunal preferred other evidence. Having determined that it preferred the evidence of Mr Woodhouse in respect of the later demand for the earlier period, it did not consider that it could rely on the correctness of the evidence of Mr George in relation to the earlier demand for the later period. Again, the Tribunal preferred other evidence.

129. The Tribunal noted the documents produced as sent to other lessees, albeit without supporting evidence from any such lessee. The Tribunal did not find the lack of the demands sent to the other directors of the right to manage company who had not paid the service charges to be of assistance. Whilst Ms Doliveux contended that the Applicant should have provided those and instead had cherry- picked documents, the Tribunal found that what the Applicant had done was to provide documents it considered would assist its case, which is all it had needed to do. The Respondent could have provided the documents from other cases if he had considered they were relevant, but he had not provided them either.

130. The Tribunal had particular regard to the 2020 Decision and that the instruction of Rayners was in consequence of that. The necessity for the demands to be accompanied by the summary was spelt out in that Decision. It is a matter which the Applicant and Rayners, if they were somehow otherwise unaware, could scarcely fail to have been aware of and aware of the need to act on. The Tribunal finds it implausible that set against that background they failed to do so. That is notwithstanding that the demand sent by Rayners was not valid for reasons other than a lack of accompanying documents, which cast some doubt on the approach taken by Rayners. Weighing matters, the Tribunal found those other reasons did not persuade the Tribunal that the budget (with its failings) and so the estimate was not sent or that the summary of rights and obligations was not sent.

131. The Tribunal acknowledges that the demands are said to have been blank to the back page whereas the demands refer to a note, “Note 1” to the reverse and separately other notes for lessees and landlord on the

reverse. The Tribunal did not find that of great assistance in determining the disputed evidence.

132. It is not apparent what the notes would have been, but they are not obviously the estimate of service charges or the summary of tenant's rights and obligations. The latter of those would have been more likely but there is no evidence to support it being the case in the event. More pertinently, such lack of notes offers nothing or almost nothing in relation to the question of whether the relevant accompanying documents did or did not accompany.

133. The Tribunal also notes that the bundle contained demands issued by Rayners and the Applicant accompanied by the requisite accompanying documents in respect of other flats [101- 121]. Some were specifically marked as paid. However, none of the asserted recipients were present at the hearing, as touched on above and, having excluded the statement of Mrs Turner, there was no witness evidence from any supporting persons, on either side.

134. The Tribunal was very much aware of the direct conflict of some oral evidence as between Mr Woodhouse and Mr George and took care in weighing the competing evidence and reaching its findings of fact.

135. The Respondent also asserted in the "Respondent's Response" that the Applicant had issued proceedings in the County Court rather than the Tribunal as "an abuse of power in order to try and avoid the scrutiny of the Tribunal". The Tribunal finds that to be incorrect.

136. The Tribunal doubts that the Respondent in fact meant to assert "an abuse of power", struggling to identify what that power might be contended to be. The Tribunal perceives that the intention may have been to refer to an abuse of process, which the Respondent does elsewhere in the Response. However, and assuming so, the Tribunal does not find the Respondent to have demonstrated that the Applicant issued in the County Court for that reason.

137. Rather, the Tribunal notes that the Applicant claimed unpaid money, which it was common ground was unpaid and, the Tribunal has found, in the belief that valid demands had been made and so the sums were payable. In any event, the Tribunal observes that the Court has concurrent jurisdiction to the Tribunal in respect of the payability and reasonableness of service charges, as the Defence accepts, and so was a forum properly available to the Applicant.

138. The Tribunal mentions that the right to manage company wrote to lessees by letter 25th March 2021 in respect of its acquisition of the right to manage instructing the lessees that any previous invoices raised by the Applicant or Rayners should remain unpaid. The basis for it believing that to be appropriate is unclear. As it is unequally unclear that has a relevant bearing on the instant dispute, the Tribunal says no more about it.

139. Mr Woodhouse asked a number of questions of Mr George in relation to the letter sent by the directors of the right to manage company dated 25th March 2021 referring to the particular page in the amended bundle [A201] and related matters. He asserted the Respondent had sought to frustrate any steps in respect of the Building and land, including the sale of the freehold. Those did not advance matters for the Tribunal and it is not necessary to set out exactly what was raised nor the Respondent's responses.

140. The Tribunal noted that there was no suggestion that at any time prior to the Court proceedings the Respondent contacted Rayners or the Applicant about the demands asserting them to be defective and explaining why. Mr Woodhouse noted that the demand sent by him had not contained payment details which had been on the covering letter, of which the Respondent did not accept receipt. He reasonably queried why the Respondent would have not asked for payment information. The Respondent said that was the responsibility of the entity seeking payment.

141. The Tribunal does not make any finding as to whether the Respondent individually understood the service charges which were actually being demanded and the nature of them. Nothing was put to the Respondent about those matters in the hearing and nothing had been said by him in written evidence. There was no evidence on which any finding could be made.

142. The Tribunal finds that the Applicant acted in good faith in making the demands and thereafter, albeit that in the event the demands were not valid.

Application of the law to the findings and consideration

143. The Tribunal finds that neither demand made was valid.

144. The Rayners' demand was invalid because it did not explain that it was an estimated demand and did not demonstrate adequately the service charges to which it related.

145. The Tribunal accepted Ms Doliveux's broad argument that the demand failed to explain the period of the demand to which it related. The demand gave a time period of the second part of the service charge year. The budget gave as the bottom row of figures what was described as the "Half yearly sum due".

146. The Tribunal determined that in practice the demand was not in fact for the period indicated, being a period of approximately six months between the two payment dates in the Lease and the reference to a half-yearly sum did not assist. The demand was or the second on account sum of service charges for the service charge year as a whole. The demand thereby failed to properly explain to what it related by not

identifying that. Given that it did not identify the sum as the second payment on account for the year, it was not explained that the budget overall related to the year as a whole, as opposed to the half year. There was nothing identifying the yearly estimated charge of which the half yearly sum was a half.

147. That was set against the background of the budget. The Tribunal has identified that the budget gave an overall sum for costs on what was said to be an interim basis and the figures were described as being the annual forecast. Taking that budget as a whole, a lessee ought to have been able to identify that the sums were estimated and hence surmised that the service charge demanded was an estimated one. However, the demand did not say so and there was no indication as to the period to which the budget related, including whether that was the whole service charge year or some other period.

148. A lessee might very well have worked out that the budget related to the year by considering the demand itself and working through the figures - and certainly could do so. The lessees might have identified that what was actually requested was the second on- account payment. The lessee would not have been likely to pay an excessive sum. The Tribunal has no doubt that the Applicant understood the period in question and can understand how set against that the Applicant might have perceived that sufficient information had been given and so may have failed to identify the lack of clarity explained above.

149. However, that does not help the Applicant in terms of the outcome. The relevant parties being able to work out the correct position and maybe even understanding it albeit that it was not stated ought to be unnecessary. The Lease required certain information to be given and in order to comply, that had to be sufficiently clear. It was not.

150. The Tribunal determines that the two documents did not demonstrate estimated service costs for the year and the estimated yearly service charge with each payment on account of that as required and demanded by the given demand.

151. The Tribunal determines that the demand (and budget) did not comply with the terms of the Lease.

152. It would not have taken much for the documents to comply. A handful of additional or different words would have made very plain that which the lessee might have surmised or calculated. The service charge figures and payment dates would have been unchanged. However, the position is that the documents did fall short as served.

153. Otherwise in terms of the demand, there is, no specific form of demand required. The particular form adopted would therefore not easily render the demand invalid. It is abundantly clear that the notice referred to ground rent and seems to adopt the form required to demand ground rent. However, whilst there is the mention of ground

rent and the provision under which rent and only rent is payable is cited, the fact that the demand is for service charges is apparent from the reference to Service Charge Due, the period of time and the amount for that.

154. The Tribunal having determined that the recipient would understand the demand to be a demand for service charges in spite of the other references, the Tribunal is content that the demand was in a form which did not itself render the demand invalid more generally.

155. The demand was not invalid because of a failure to provide the name and address of the landlord. In that regard, the Tribunal adopts the concession of Counsel that a demand made by a management copy demanding service charges payable to it in its own right was not required to provide details of the landlord, section 47 only applying where the landlord made the demand, and no more need be said on that point.

156. The Tribunal does not determine that the Rayner's demand was invalid because of the summary of rights and obligations referring to administration charges rather than service charges. That is because the relevant rights and obligations were set out, albeit that they referred to the wrong type of charges, and because the Tribunal found that a lessee was less likely to identify that and more likely to focus on the rights themselves. Ms Doliveux was quite right to argue that there are different provision about service charges and administration charges but the summary does not refer to those and would not have mislead a reader for that reason. If the whole case had turned on the specific point, the Tribunal would have required more detailed submissions, but in the wider circumstances of this case and given the determination made in any event about the validity of the demand, it did not consider that necessary.

157. The Applicant's own demand was invalid because it failed to give an appropriate address for the Applicant. The personal address of Mr Woodhouse was not that. There was at least no evidence as to how it could have been where plainly it was not the registered office of the company.

158. The Tribunal considers it likely that Mr Woodhouse did not appreciate why Rayners had used the registered office and that he had used an address at which he would directly receive any correspondence. However, that does not make the address the appropriate one in law.

159. No additional information in the covering letter could cure that defect.

160. Likewise, whilst the Tribunal can understand that Mr Woodhouse may not identify a practical distinction between the Applicant on the one hand and himself as director on the other, the two are different in law and it is the details and address of the Applicant and not of Mr Woodhouse which were required to be provided.

161. The demands were also invalid for the reasons identified in respect of the Rayners' demand, which the Tribunal does not repeat, with one exception. That exception is that the summary of rights served in this instance did refer to service charges, so no point about reference to administration charges arose.

162. It follows that whilst the provision of the estimates and the summaries of tenant's rights and obligations were positives in themselves and a significant step forward from the demands considered in the 2020 Decision, it could not make valid demands not otherwise valid where issues arose with the nature of the estimates and related information and the incorrect address.

163. Given the invalidity of the two demands, the service charges demanded are not payable and due in response to those demands.

164. It is with some disappointment that the Tribunal makes the determinations, given that the consequence is a lack of payment of further service charges for costs which were expected to be expended- and the Tribunal perceives are very likely to have been expended in sums of approximately the level estimated. Having found documents to have been sent with the demands, and that a lessee is likely to have understood what the demands probably related to- and at the very least been able to query and seek clarification if required- the Tribunal identifies nothing which the Respondent ought to have been informed about and which he did not receive information about, much as he was informed imperfectly.

165. Nothing inadequate about the estimates of costs and charges would they have altered the expenditure required to manage the Building. As Mr Woodhouse observed, the 2002 Decision did not find there to have been mis- management by him and nor has there been any other such finding.

166. Set against that, the Applicant's failings are on one level relatively minor. The very unfortunate matter for it is that they are on that level relatively minor but nevertheless fatal. The fact that Mr Woodhouse acted in good faith does not avail it. The Tribunal accepts that the Respondent was not compelled to take the opportunity to ask for payment information specifically and was not obliged to pay a demand which was not valid. The lack of the requirement for the Respondent to make payment is nevertheless very much a windfall for him, where there is no identifiable reason that the charges would not have been payable otherwise.

167. The Tribunal has not dwelt on the argument raised by Ms Doliveux that issue estoppel arises and does not need to examine matters in detail to consider whether the wide principle that a decision of a panel of this Tribunal is not binding on a differently constituted Tribunal should in any way be considered to fail to hold good.

168. The Tribunal does not seek to determine the answer which may be given if valid demands were now served and in particular give an answer to any effect of the time which has elapsed. Those can be addressed at another time in the event relevant. That is not by any means to encourage further proceedings, rather it is to be hoped that both parties would make appropriate investigations or seek appropriate advice if either is required and establish the likely determination of any question of validity of the demands without any such proceedings being required.

169. The Tribunal also does not of course seek to determine the claims which it was identified in the hearing have been brought by the Applicant against the other directors of the right to manage company, who the Tribunal understands have also not paid their service charges. This Decision is not binding on any other Court or Tribunal. However, assuming the correctness of the determination that the demands were not valid, there must be at least a fair prospect of the same outcome in any other proceedings. The Applicant may do well to consider that risk.

170. To the extent that there has been bad blood between Mr Woodhouse and Mr George and there may be with the other directors of the right to manage company- and whoever may be at fault with that, about which the parties' positions were perhaps unsurprisingly different- they have flats in the same modestly sized block and are bound to have ongoing dealings. Putting aside any bad blood and working in mutual best interests- and equally the interests of the other lessees- to the extent required is likely to be the wisest course for all concerned.

Decision

171. The Tribunal accordingly determines that the service charges demanded by the Applicant from the Respondent are not payable because the demands served were not valid and so no obligation on the part of the Respondent to make payment arose.

Costs in the Tribunal proceedings

172. The Tribunal had insufficient time to hear representations about the applications which the Respondent wished to make in respect of costs of the Tribunal proceedings. The Tribunal therefore concluded that written submissions should be required as to costs following receipt of this Decision, enabling the parties to consider the Decision before deciding upon any applications to make and any basis for those.

173. Directions will be given separately by the Tribunal.

ANNEX - RIGHTS OF APPEAL

Appealing against the Tribunal's decision

1. 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 date this decision is sent to the parties.

2. 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.

3. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

4. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

5. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case. The date that the judgment is sent to the parties is the hand-down date.

6. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

7. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties:

    1. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

    2. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.

    3. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.