FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Liverpool, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference	**:**	**LON/0000AD/LSC /2021/0001 LON/00AD/LSC/2021/0028**
Court claim number	**:**	**G30LV267**
Property	**:**	**50 Fairview Drive London SE28 8QLK**
Applicant/Claimant	**:**	**Thamesview (Plots 242 – 281) Residents Association Limited**
Representative	**:**	**Ms Robyn Cunningham – Counsel instructed by JB Leitch Ltd solicitors**
Respondent/ Defendant	**:**	**Mohammad Sarf Al-Deen with Olayemi Omolodun in application L0N/00AD/LSC/2021/0028**
Representative	**:**	**Mr Al-Deen**
Tribunal members	**:**	**Judge Dutton and Mrs A Flynn MA MRICS**
In the county court	**:**	**Judge Dutton and Mrs A Flynn MA MRICS as assessor**
Date of Hearing	**:**	**16 and 17 June 2021**
Date of decision	**:**	**14 July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face

hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 793 pages, the contents of which we have noted.

DECISION

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

1. The following sums are payable by the Mr Al-Deen to the Applicant by 31 August 2021:

   (i) Service charges for the years claimed in the County court: £3,847.88
   (ii) Service charges for the year 2020/21 in the sum of £1,617.30
   (iii) Service charges for the year 2021/22 in the sum of £1,931.92

Summary of the decisions made by the Court

   (iv) Legal costs under CPR 27.14: £285; are payable by the Respondent Mr Al-Deen to the Applicant by 31 August 2021

   (v) Interest at 8% as set out at paragraph 63 in the sum of £259.16 by 31 August 2021

The proceedings

2. Proceedings were originally issued against the respondent in the County Court at Liverpool under claim number G30LV267. Following a hearing at the Court by an order dated 9 December 2020 DJ Lampkin ordered the transfer of the proceedings to this tribunal.

3. Directions were issued firstly on 18 January 2021 by Judge Martyński and a second set was issued by Judge Silverman on 1 March 2021. These second proceedings ordered that claim ending 2021/0028 should be conjoined with the earlier claim. These directions did not include the involvement of Olayemi Omolodun. However, this application, dated 7 February 2021 does name her and seeks to deal with the earlier years of 2016/17 and 2017/18 and the future years of 2020/21 and 2021/22. The matters eventually came for hearing on 16 and 17 June 2021.

The hearing

4. The applicant freeholder, Thamesview (Plots 242 – 281) Residents Association Limited was represented by Ms Robyn Cunningham of counsel, instructed by JB Leitch Limited solicitors, who was

accompanied by Mr Danny Foster of FirstPort Property Services Limited, the managing agent. The respondent leaseholder, Mr Mohammad Sarf Al-Deen appeared in person, together with Olayemi Omolodun. Although she was named in an application there was no witness statement from her and no real indication as to what she challenged, other than she joined with Mr Al-Deen in the issues he has raised. She was present during part of the hearing but in the absence of any statement her involvement was extremely limited.

The background

5. The subject property is a ground floor flat in the block containing plots 258 – 265, Thamesview, Thamesmead and known as 50 Fairview Drive, Thamesmead London SE28 8QL (the Flat). Mrs Omolodun's flat is 62 Fairview Drive.

6. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute and given the current pandemic.

7. The respondent holds a long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. The claim in the Court was for a declaration under s81 Housing Act 1996 that service charges and administration charges were due and owing and that as a result Mr Al-Deen was in breach of his lease. A money judgement was sought for service charges totalling £3,847.88, and administration charges of £240 together with interest then in the sum of £214.14 and costs.

9. When the first directions were issued Judge Martyński stated that he did not think the proceedings should have been started under Part 8 procedures (see paragraphs G – I in the directions dated 18.1.21). These directions went on to confirm that this tribunal would deal with all issues in the case, including costs and interest. The second set of directions issued by Judge Silverman altered the time scales but does not record any objections to this tribunal dealing with all matters before the County Court.

10. Following exchanges of statements of case, the issues we were required to deal with were set out in skeleton arguments provided by both the applicants, through Ms Cunningham and from Mr Al-Deen. They were as follows:

(i) A lack of receipt of the service charge demands during the period in dispute and a complaint that the demands did not comply with s47 Landlord and Tenant Ac t 1987 (the 1987 Act);

(ii) That the building insurance premiums claimed were excessive;

(iii) That the contract between the Applicant and FirstPort was a Qualifying Long-Term Agreement (QLTA) and that there had been a failure to consult under s20 of the Landlord and Tenant Act 1985 (the 1985 Act)

(iv) The recoverability of charges associated with fly tripping at the development.

(v) The proposed roofing works, currently subject to s20 consultation

(vi) Issues concerning reserve fund payments, in particular the estimated sum of £10,000 demanded for 2020 – 21.

(vii) Alleged breaches of the landlord's repairing covenants relating to works to the communal doors and entrance porch (see para 9 of the Respondent's statement dated 25 September 2020 page 126 of the bundle)

(viii) General allegations of unreasonableness as referred to in a Scott Schedule prepared by the Respondent for the years in dispute.

(ix) Application under s20C of the 1985 Act and para5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).

(x) A failure on the part of the Applicant to follow the Pre Action Protocol, which had they done so could have resolved the issues and allegations that the Applicant had failed to comply with s21; section 22; section 30A and paragraph 3 to the schedule to the 1985 Act

(xi) Breaches by the Applicant in failing to supply documents Mr Al-Deen wished to see as are highlighted in his skeleton argument at paragraph 16. He says that the Applicant's refused to mediate.

(xii) A failure to provide the Accountants certificate as required under clause 4.2.4 of the lease.

(xiii) A challenge to the Applicant's entitlement to interest and costs.

11. At the start of the hearing Mr Al-Deen outlined his concerns about service of the demands and their efficacy. He said that until 2018 he had paid without demur, by Direct Debit. It was unclear whether he had

received demands in that earlier period, but he now says he did not receive demands for the years in dispute and that having now seen them he says that they do not comply with the 1987 Act. He was also somewhat confused as to the identity of the Applicant, considering that Mr Ramsden, a director, was the freeholder.

12. Ms Cunningham drew our attention to the lease in the bundle at pages 32 onwards (pdf numbering). This showed at recital (4) that after completion of the sale of then last flat, that the flat owners will become the members of the Applicant, which includes the amenity land, as defined in the lease, will also be transferred to the Applicant. We were told this had taken place. Accordingly, although he did not appear to know this Mr Al-Deen and the other leaseholders are members of the Applicant company. Mr Ramsden is a resident, who is also the director of the Applicant, it appearing that no one else wished to take on a directorship role.

13. Documents in the hearing bundle are referred to by their pdf page number. It must be said that the bundles were unhelpful. Originally, they were divided into 4 sections, each separately numbered. There was no index. Eventually we received one paginated bundle, which made it easier to follow, but again no index was supplied. This is not acceptable and added to the time spent on this case.

14. We considered that it would be easier to deal with the matters on an issue-by-issue basis. This decision therefore addresses each matter raised and makes findings.

The demands and compliance with s47 of the 1987 Act.

15. Within the bundle were copies of Companies House entries relating to the Applicant. This shows the company number 03942866, the registered office being FirstPort Property Services Limited Marlborough House4, Wigmore Place, Wigmore Lane, Luton England LU2 9EX. It was incorporated in 2000 and shows FirstPort as the company secretary and Mr Philip Ramsden of 16 Fairway Drive as the director. The demands in the bundle, for example at page 77 clearly show that for the purposes of s47 the registered office of the Applicant is as shown on company records and the same applies to the provisions of s48 of the 1987 Act.

16. As to service, it is said by Mr Al-Deen that he did not receive any demands from 2018. There are a number of copy demands throughout the bundle, all appear to be properly addressed and according to Mr Foster an automated service was used to send out the demands and the accounts. He was not aware that any other leaseholder had complained about non-service. Mrs Omolodun had not made any statement to support Mr Al-Deen in this case and certainly not in respect of non-service. It is noted that in a response to the application made by Mr Al-Deen there is a statement of account from 1 March 2005 to 1 September

2020. This shows the direct debits to April 2018 and then two online payments of £250 and £300 on 31 August 2018. At this time, the summer of 2018, Mr Al-Deen was in correspondence with the Applicants (Mr Foster) and submitted application under s30A and paragraph 3 of the Schedule to the 1985 Act on19 August 2018 and on the same day a request for inspection of invoices etc under s22 of the 1985 Act.

Decision

17. We are satisfied that there has been compliance with both sections of the 1987 Act. The registered office is the office of FirstPort, which makes sense as they stand as Company Secretary. In fact, FirstPort's registered office appears to be in New Milton, Hampshire. The name of the Applicant is clearly recorded on these demands for the purposes of s47 and 48 of the Act and we do not consider there is merit in this complaint.

18. As to service we find it surprising that Mr Al-Deen did not receive any demands yet was engaging with the Applicant's managing agent in 2018 and serving the requests we have referred to above. We accept the evidence of Mr Foster that the demands and the accounts are sent out on an automated basis. He said there had been no challenge by other leaseholders relating to lack of service. Mr Al-Deen did not arrange for Mrs Omolodun to make a statement to support his concerns. On the balance of probability, we find that the demands were sent to Mr Al-Deen and that at the very worst he became aware of them in 2018 when he engaged with FirstPort concerning documentation.

Insurance

19. At paragraph 21 of Mr Al-Deen's statement of case dated 16 April 2021 he sets out his concerns (page 395) He says he did not believe that the building was insured, and that the premium was too high. To reflect this point he had obtained quotes, he says on a like for like basis from a number of insurers who details are shown at paragraph 22 of his statement of case. He relied on the quote from Gravity showing a premium of £1,173.08, which was the lowest, the highest being Aviva at £2,100. He says no evidence of payment of the premiums was produced to him.

20. In response Ms Cunningham took us to page 760 of the bundle being an email to Mr Al-Deen dated 10 March 2020 enclosing service charge accounts for 2017/2018, an analysis of expenditure for 2018/19, with invoices/receipts for that year and insurance schedules for 2016 – 2020. We were also referred to the audited accounts for the years ending February 2017, 2018, 2019 and 2020 with the estimated accounts for those years and for 2020/21 (page 320) and 2021/22 (page 324). These accounts all show payments in respect of insurance premiums in each year.

21. At page 678 onwards, exhibit C to the Applicants statement of case, are copies of the Buildings Insurance Specification/Schedule with Ecclesiastical for each of the years through to June 2021. These have been affected by FirstPort Insurance Services Limited. They do not disclose the premium paid, but they do include terrorism cover, which is omitted from the comparable quotes obtained by Mr Al-Deen.

22. Mr Foster told us that he believed that the FirstPort insurance arm did test the market, but he was not aware of the insurance arrangements. The Applicant's statement of case at page 525 was scant on detail.

23. Mr Al-Deen had been able to get further information on his comparable quote from AXA dated 5 February 2021. This showed a premium of £1212.09 including tax with cover starting 5 February 2021. The reinstatement value and sum insured were commensurate with the existing cover. The excesses were not dissimilar. The quote had been obtained by LMR Insurance, but we do not know if this is a truly like for like, although save for claims history, of which there appeared to be little, Mr Al-Deen said it was.

Decision

24. We are disappointed that the Applicant did not think it necessary to obtain a statement from FirstPort Insurance Services Limited who would have been able to confirm whether or not that they tested the market and what arrangements there were for commission.

25. The reliance of Ecclesiastical for the years in dispute does not indicate to us that there was a great deal of review carried out. The premium for 2020/21 is estimated at £3,100 with terrorism a further £135. For the following year, according to Mr Al-Deen the estimated insurance for 2021/22 is £3,628. The quote from AXA is considerably less, even if one adds in the terrorism premium paid by the Applicant, making it £1,347.09.

26. Even allowing for the established principle that the Landlord does not have to accept the cheapest quote, the difference, even allowing for a potential divergence, which would seem to be the limited claims history, does not explain the gulf between the two. AXA is a recognised insurer. We find that for the year 2020/2021 the reasonable premium would be circa £1,500, which is half the premium charged by the Applicant. Therefore, doing the best we can and taking the matter in the round we reduce the premium payable for insurance, including terrorism, for 2020/21 to £1,500 and would also find that for the following year the estimated premium of £3,628, presumably including terrorism, should be reduced to £2,000 for the same reasons we have set out above. This means that for both Mrs Omolodun and Mr Al-Deen the premium for these two years should be reduced to 12.5% of £1,500, namely £187.50 and for the following year to £250. Going forward it will be for the

Applicant, thorough the Insurance Brokers, to provide evidence that the market is tested and that commission details are disclosed so that the leaseholders can be satisfied that the appropriate insurance cover, at a realistic premium, is in place.

27. The question of a QLTA was raised about insurance, but this is a non-starter as the policy schedules clearly show that they are annual.

Management charges

28. The complaint by Mr Al-Deen was that the management agreement was a QLTA. He made this assertion in the absence of a copy of the agreement being provided to him. During the course of the hearing, we were provided with a copy of the agreement said to govern the relationship between the Applicant and the managing agents. It is between the Applicant (called the Management Company in the agreement) and OM Management Services Limited, who have now become part of FirstPort. The agreement is dated 2 May 2000 and relates to the management of the three blocks at the Estate. The following terms are important:

(a) 3.4 *'The Term 'means: The Period of twelve months from the Commencement Date together with any continuous period thereafter through until terminated in accordance with Clause 7.3 hereof*

(b) 3.5 *'The Commencement Date' means: 28 days after written notice of Commencement shall be given from the Management Company to OM Management Services Limited.*

7. Termination

This Agreement shall terminate

7.1 Upon expiry of the Term

7.2 (in default)

7.3 Upon six months written notice by either party to the other to expire at any time after the expiry of six months from the Commencement Date

7.4 (liquidation or receivership)

Decision

29. The length of term and the provision for the agreement to terminate by reference to either clause 3.4 or 7.3 means that the basis of a QLTA is not shown and accordingly, as this is the only challenge to the management provisions it must fail. It is a pity that the agreement was not produced

to Mr Al-Deen in advance of the hearing, although truth to tell he did not appear to accept the position when it was produced to him.

Fly Tipping

30. Mr Al-Deen's skeleton did not indicate that this was a continuing issue, but the matter was addressed at the hearing. The sums involved for the years in dispute are substantial, between £8,352 and £9,546 for each year, giving a charge to Mr Al-Deen of between approximately £209 and £240 per annum. He complained that bins were left out and were torn apart, he thinks by foxes. Further there were items dumped, it seems by both residents and outsiders. Mr Al-Deen suggested a skip could be hired at a cost we were told of £400 per month.

31. For the Applicants it was accepted by Ms Cunningham that it was a serious problem. The Applicant has an obligation under the lease to clean and maintain the estate as set out at clauses 6.3.1 and 6.3.6. Mr Foster referred us to an email he had sent to Mr Al-Deen at page 741 of the bundle dated 21 August 2012, This set out in some detail the steps that had been taken including lodging a planning application for the installation of a fence, which he was told by the planners would not be granted. Mr Foster told us that CCTV had been tried but had been vandalised. He had met with Environmental Health who had installed some temporary cameras and indeed had operatives on site for a time, but to no avail. He told us that the area of Thamesmead suffered from this problem.

32. Mr Al-Deen said that problems had been exacerbated when a fence was knocked down and was not repaired for some time. It had now been repaired and he considered that matters where not as bad during the pandemic. The Council conduct the day to emptying of the bins and it is a separate contractor who deal with the fly tripping.

Decision

33. We have sympathy with Mr Al-Deen in the problems the Estate suffers from. It would appear that residents contribute to the problems but that there is dumping of items by non-residents. It is unfortunately a common problem. The Applicant is contractually bound to deal with the fly tipping and a cost to the Residents of circa £200 per annum, whilst unwanted, is not an excessive charge. We do not see that the Applicant could do anything else, save for renewing a planning application to make the Estate more secure from fly tipping. Mr Al-Deen;s suggestion of a skip would, we venture to suggest, just exacerbate the problem providing one more receptacle for rubbish, without addressing the access point. In the circumstances we find that the charges are reasonable and payable. The suggestion that these works are under a QLTA has no merit. It appears that the clearance is by a company called Southside Cleaning

and we were told by Mr Foster that their contract can be terminated at any time.

Roof works

34. Section 20 consultation had started in respect of major works to the roof. However, it has been put on hold following objections from leaseholders when it became apparent that the reserve funds would not cover the cost. Mr Foster reminded us that the Applicant is a tenant owned management company and the views of the member had to be considered. Apparently, an email address has been created giving access to all leaseholders, although Mr Al-Deen said he was not included, allowing leaseholders to contribute to issues.

35. Mr Al-Deen said there were concerns, for example the photographs supplied did not appear to relate to his block. He had himself set up a Face Book page for his neighbours and consideration was being given to creating a RTM company.

Decision

36. There is nothing for us to decide upon in this regard. Mr Foster told us the works were on hold and in all likelihood, there would have to be a re-tender. Mr Al-Deen's position is preserved and if the issues are resurrected, he will be able to make such representations as he considers are necessary.

Breach of lease covenants

37. Mr Al-Deen in his statement of case complains about the state of the entrance porch and the communal door. We were told by Mr Foster that a s20 consultation had started before the Court proceedings and these works had now been completed with the use of reserve funds. Mr Al-Deen confirmed that the works had indeed been completed.

38 In his skeleton argument he turns this matter into an allegation of breach of the lease on the part of the Applicant and as justification for him to withhold his service charge payments. There is no detailed claim in his statement to the Court dated 25 September 2020 at page 124 of the bundle.

Decision

39. We consider this to be an unrealistic claim. It was not a matter raised in any detail in the aforesaid statement, indeed he appeared to concentrate more on alleged breaches of section 21, 22 30A and paragraph 3 top the schedule to the 1985 Act. The works he complains of have now been

completed and accordingly we dismiss any claim for an alleged breach of lease as being unsupported by evidence.

Reserve fund contributions

40. In his statement of case for these proceedings Mr Al-Deen accuses the Applicant of 'serious fraudulent behaviour' in respect of demands made to contribute to the reserve fund, which for his block stands at around £15,000. He says that the leaseholders were not consulted on the sums to be collected for the reserve fund nor have invoices been produced for works said to have been paid from the reserve fund. Neither is there a planned maintenance programme in place. In particular, he challenges the estimated demand for £10,000 for the Estate reserve, although accepted that there need to be a reserve fund. He did accept that the reserve fund monies were held in a trust account.

41. The accounts at pages 559 onwards show that in the years 2017 to February 2021 the contributions to the Estate reserve have been £200 and to the block £4,150 for the years ending 2018 when it was reduced to £2,650 rising to £3,000 in the anticipated costs for year ending February 2022. However, without warning it would seem for the estimated expenditure in the year 2021-22 the Estate Charge has climbed to £10,000 and it is this that in reality Mr Al-Deen challenges.

42. Mr Foster explained that it had jumped to this level after he had consulted with the Applicant's director about costs for bin store doors and other works to that area and the cycle store. The last set of accounts to February 2020 show only £419.45 in the Estate reserve. He confirmed that there was no planned maintenance programme in place as it costs money to undertake such a project and conceded that £200 per year as reserve funds contribution was too low. He also confirmed that the sum claimed was anticipated expenditure only and could be reviewed.

Decision

43. We have sympathy with Mr Al-Deen on this point. To increase the reserve fund contribution from £200 to £10,000 in one go is, we find unreasonable, even if it is accepted that the Estate Reserve fund is too low. That is a failing of management. It is unreasonable to demand that sum without there being a planned maintenance programme in place.

44. We find that a demand in the sum of £2,500 for the year 2021/22 would be reasonable and that it would be reasonable to continue to make demands at level until a suitable sum is held in reserve. This would give Mr Al-Deen a contribution of only £62.50 and the same would apply to Mrs Omolodun, meaning that the contribution to the reserve fund for the Estate for this year should be reduced by £187.50 for them both. If

unusual expenditure is required for the items mentioned at paragraph 42 above, then consultation should take place.

GENERAL

45. The above have dealt with the bulk of the service charge issues raised by Mr Al-Deen in his statements and in his skeleton argument. There is no real challenge to the earlier years in his application, save insurance, which we have dealt with above. The sums claimed for the on-account payments in the year 2021/2 are at page 320 and for the following year at page 324. In addition, there is a sum sought for roofing works shown on the demands for 2021/22, which should be expunged from both Mr Al-Deen and Mrs Omolodun accounts. The demands in respect of the insurance and the Estate Reserve fund should be reduced as we have set out at paragraphs 26 and 44 above and in the Conclusion.

46. There was a question raised with regard to the Chartered Accountant's certificate referring to clause 4.2.4 of the lease. This says as follows: *"4.2.4 As soon as practicable after the end of each accounting year chartered accountants engaged or employed by the lessor shall determine and certify the amount by which the estimate referred to in clause 4.2.2 shall have exceeded or fallen short of the actual expenditure in the accounting year and the lessee shall be entitled to a copy of the certificate at the expense of the lessor."*

47. Mr Al-Deen says he did not receive such a certificate. However, it does appear that he has seen the accounts and these accounts clearly contain a certificate by BDO Chartered Accounts that they have audited the accompanying service charge accounts for Thames View for each of the years and that in their opinion the service charge accounts for Thames View are prepared in accordance with accounting policies. This we consider is a sufficient certificate for Mr Al-Deen's requirements.

48. It is perhaps appropriate at stage to make some comment on the lack of documentation and assistance given to Mr Al-Deen by the Applicant. They failed to comply with the directions requiring disclosure of documentation and to complete the Scott Schedule, which Mr Al-Deen had himself prepared. Their response in the statement of case was that the schedule contained generic repetitive and unsupported submissions. It complains that there was no comparable evidence and that they were merely blanket assertions. It suggested that Mr Al-Deen's assertions were arbitrary and disingenuous. We do not deny that the Scott Schedule is not as helpful as it might have been and does indeed contain somewhat generic requests. However, Mr Al-Deen had been asking for copies of invoices and other documentation for a little while. It seems in March of 2020 he was sent paperwork, although he seems to be unsure as to whether or not he actually saw this. There is no doubt that for somebody who alleges a lack of legal knowledge his delving into the 1985 Act to produce demands under sections 21, 22, 30A and the 3rd schedule

of the Act shows something of a grasp of the intricacies of the legislation although it is something of a scattergun effect that he creates.

49. It is with some disappointment that we record that it was only during the evening between the two days that he received a breakdown of the accounts for each year, which we feel should have been produced to him early on. He received them for one year 2018/19 in the March 2020 letter, and those contained details of the item of expenditure and it may well be that if these had been provided to him for each year in question then some of the issues would have fallen away. In the morning of 17th June having confirmed he had received the breakdowns but not had the real chance to consider them in any detail he did ask if the Applicants would re-issue the demand for the present year.

50. Mr Foster responded that he accepted that there had been concerns raised about rising costs and it was one reason why he had set up the group email to discuss reserve fund and roofing works. He also felt that it would be sensible if one director were appointed from each block to be part of the management arrangements and that he would be holding an AGM to discuss issues. He confirmed he had told credit control to hold off on any chasing for the costs of the roof and that he would add Mr Al-Deen's email into the new group he was setting up for leaseholders so that he was aware of what was occurring.

51. In respect of the section 21 notice, we were told that full information required had been provided in a letter of 10th March 2020 to Mr Al-Deen and he confirmed that in fact he had not gone back to the solicitors to request any further information. Indeed, he said he may have missed that letter. There are some conflicting emails about what documentation may have been produced. For example, on 12th March 2019 Mr Al-Deen wrote to Hannah Lloyd of JB Leitch & Co requesting the information he had sought under the various sections giving a period in time for those to be resolved. A response on 7th March 2019 indicates that a copy of all invoices and reminder letters were sent and copies of the insurance certificate followed on 14th March 2019. That email from JB Leitch & Co said they were also liaising with their client to arrange inspection. That did not seem to happen and of course at the early part of 2020 Covid intervened. We do however have the letter of 10th March 2020 sent to Mr Al-Deen which he says he may not have seen, including the service charge accounts for the year ending 28th February 2018, the analysis of service charge expenditure for 2018/19, invoice and receipts for that year and the insurance policies. There, clearly by March 2020, was information available to Mr Al-Deen, which he could have followed up upon but seems he did not. Nonetheless, we still think that the Applicants through their solicitors could have provided information in a more timely and appropriate fashion. To be provided with a copy of the management contract and the analysis of service charge expenditure for the years in dispute during the course of the hearing is not appropriate and certainly has weighed on our minds when it comes to the question of determining costs.

52. We invited submissions both from Miss Cunningham and from Mr Al-Deen. Much of these submissions have been built into the various headings that we have dealt with. We will address the question of costs separately.

53. Ms Cunningham reminded us that the Applicant was a residents owned management company who had a clear interest in keeping costs low. Mr Al-Deen was a member and could play a greater part inn the running of the development if he wished. We took into account all she said about the various issues and her reference to authorities such as Arnold v Brittain.

54. Mr Al-Deen in his submissions pointed out this was the first time that he had been to a Tribunal and was of the view that he had the right to know what he was paying for and that there should be transparencies. He had requested documentation before proceedings started and denied again that he had never received the demands. He again made points concerning section 47 which were ill founded, and we noted his submission, which in truth we had taken into account in reaching the decisions under the various headings.

COSTS

55. Mr Al-Deen's record of payment is, in reality, quite good. At 4th August 2017 there was a nil balance on his service charge account. He continued to make regular monthly payments until March of 2018. It was then that he started to query the amounts demanded. Prior to that as at 6th February he was only in arrears to a tune of £178.48. He confirmed he was always willing to pay the monthly contribution of £138.66. The proceedings would fall under the small claims track as the amount sought to be recovered, putting aside the claim for a declaration pursuant to section 81 of the Housing Act 1996, was for service charges in the amount of £3,847.88 and an administration charge of £240. To that was interest added, although pleaded at the rate of 8% in fact appears to be at the base rate provisions contained in the lease.

56. Miss Cunningham in her submission to us said that the only element of contractual costs that she could rely on apart from clause 9 allowing rights of forfeiture was at 4.8 of the lease which says as follows: *"To permit the lessor and its agents and the public bodies with or without workmen and other at reasonable time as to enter upon and examine the condition of the property and following such examination the lessor may serve upon the lessee notice in writing specifying any repairs necessary to be done and requiring the lessee forthwith to execute the same and if the lessee shall not within one month after service of such notice or earlier if necessary proceed diligently with the execution of such repairs then to permit the lessor to enter upon the property and execute such repairs and the costs thereof shall be a debt due to the lessor from the lessee and shall be forthwith recoverable by action and the lessee shall pay all expenses including solicitors and surveyors costs and expenses incurred by the lessor incidental to the preparation and*

service of notices under section 146 or 147 of the Law at Property Act 1925 or any statutory re-enactment thereof not withstanding forfeiture is avoided otherwise than be relief granted by the Court."

57. She was of the view that the clause had to be construed in a lease where clearly it was not intended to be a litigious one. It was for membership of the Applicant Company. The clause that we have recited above she says was taken to impose costs in two circumstances. One where litigation could be entered into, recoverable by action in respect of the failure to repair and by forfeiture under clause 9 bringing the right of re-entry if rent is not paid for 28 days. She confirmed that in her view these were the only sections where legal costs could rest.

58. Insofar as the County Court was concerned, she considered that CPR 27.14 applied in that the Respondent had acted unreasonably and therefore costs could be claimed on that basis. The unreasonableness was his denial of having received documents and that when he raises issues, which are answered, further issues then flow from that. In addition, although every point appeared to have been taken, no offer was made of any alternative quotes and points taken on some issues for example the notices were unreasonable. It was her view that Mr Al-Deen had excellent opportunities to get involved and could have avoided these issues if he had become properly engaged with First Port.

59. Our findings in connection with the costs are this. We do not consider that clause 4.8 can be stretched so far as to include all claims made by a landlord for breaches of the lease. In the directions issued by Judge Martyński in this matter he made it perfectly clear that in his view commencing proceedings under section 81 of the Housing Act 1996 was erroneous and that this matter should have been dealt with as a simple money claim under the smalls claims track procedures. We agree with him. Furthermore, we do not consider that Mr Al-Deen's behaviour has been unreasonable. He was requesting documentation some time before proceedings commenced and the Applicant through First Port and solicitors were somewhat reluctant and indeed slow in producing paperwork. Talk was of a meeting enabling Mr Al-Deen to attend presumably First Port's offices but that did not happen. We can imagine that Mr Al-Deen's somewhat scattergun approach would have caused some concern for the Applicant in the production of paperwork. However, the simple means of resolving this would be to have made an appointment for Mr Al-Deen to attend First Port's offices, to have trawled his way through the invoices and other documentation and to have satisfied himself, or not, as the case may be that all was in order. At least then he could have produced a Scott Schedule which was more focused rather than the one that we were presented with which had not been responded to by the Applicants and which did not provide much assistance in signposting the way that Mr Al-Deen wished to pursue the case. However, we do not consider that is unreasonable behaviour and accordingly the provisions under the small claims track for costs under CPR 27.14 are not invoked.

60. Accordingly, this being a small claims case we find that the Court fee that would have been paid on issue is £205 and the fixed fee payable in respect of this matter is £80. This deals with the costs associated with the County Court proceedings. Insofar as the proceedings before us are concerned as we have indicated above, we do not believe the lease contains a contractual provision for the Applicants to be able to recover their costs against the Respondents.

61. The Respondent has suggested that there should be costs against the Applicant for behaving unreasonably. There is some support to be had to his suggestion that they were late producing documents, but it does seem to us that by March of 2020 he had all that he needed or at the very least a signpost in the direction that he should have gone to request further documentation. It appears he did not respond to that email. It appears he did not pursue the possibility of meeting, although during 2020 that might have been difficult. His approach towards a number of the documents was somewhat scattergun and did make it difficult, in part, for the Applicants to respond meaningfully to some of the applications and challenges that he made. He had produced a schedule of what he considered to be his costs, which we have considered but even if we were minded to award costs his rate of £50 per hour was far above the litigant in person rate of £19 per hour. In any event, we do not consider that the applicant has acted so unreasonably that any costs should be claimed against them, presumably under Rule 13 of the Tribunal Procedure (First Tier) (Property Chamber) Rules of 2013. In our view his application does not get past the first test as set out in the Willow Court case.

62. To sum up, therefore, we take the view that, apart from the fixed costs that the Applicants are entitled to in relation to the County Court proceedings, both sides should bear their own costs of these FTT proceedings. We therefore make no further order for costs. The only other matter that we should deal with is interest. We have made no reduction on the amounts that were claimed in the County Court proceedings as the reductions rest with Mr Al-Deen's application in respect of insurance and the reserve fun, both of which are estimated sums. Accordingly, the service charge liability would appear to be that claimed which is £3,847.88. We find that the £240 in respect of legal review fees is irrecoverable under the terms of the lease for the very same reasons that costs are not recoverable.

63. As to interest looking at the schedule of debt at page 74 of the bundle it would seem that the liability of £4,087.88 which includes the £240 administration charges has a date of 10th July 2020. We can gain no assistance from Miss Cunningham's skeleton argument on this point. Accordingly, if we consider interest from that date, at the rate in the County Court of 8% per annum, to the date of hearing, on £3,847.88, this gives interest from the 10th July 2020 to 17th June 2021, at a daily rate of 76p over 241 days, giving an interest figure of £259.16, which we award in this case.

CONCLUSION

64. By way of conclusion, we made the following awards in favour of the landlord.

(i) Service charges to 10th July 2020 in the sum of **£3,847.88**.
(ii) Service charges for the periods 2020/21 as set out at page 320 of the bundle stand save that the insurance is reduced to £1,500, total, of which both applicants pay £187.50. This therefore reduces the contribution for the block from £1,242.50 to £1,025.62, a reduction of £216.88. The total payable is therefore £591.68 +, £1,025.62 = **£1,617.30**
(iii) Service charges for the year 2021/22 (see page 324) are reduced in respect of the Estate Charges for Reserves from £10,000 to £2,500 and the insurance for the block from £3,628 to £2,000. This therefore reduces the contribution to the Estate costs of £980.05 down to £792.55 and the Block costs from £1,342.88 to £1,139.37 giving a total payable on account of **£1,931.92**.
(iv) Fixed legal costs in connection with the claim under the small claims track **of £285.**
(v) Interest at 8% as pleaded in the Particulars of Claim in the sum of **£259.16** to the date of the hearing.
(vi) The landlord has asked for the order to be made as an order of the County Court so it can be directly enforceable without further application having to be made to the Court to stop, we accede to this request and have drawn a form of judgement that will be submitted with these reasons to the County Court sitting at Liverpool to be entered in the Court record. All payments are to be made by 31 August 2021.

Name: Judge Dutton **Date:** 14 July 2021

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

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

3. 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.

4. 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

5. 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 the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. 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.

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

5. 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.

6. 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 appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.

7. 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 County Court

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