



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY) &
IN THE PLYMOUTH COUNTY COURT**

Tribunal reference : HAV/00HG/LIS/2025/0002

Court claim number : K68YX192

Property : Flat 4, 2-3 Stokes Lane, Plymouth. PL1 2LW.

Applicant/Claimant : MB Freeholds Limited.

Representative : Daniel Jones (Counsel).

Respondent/Defendant : Mark Roger Gray.

Type of application : Transferred proceedings from the County Court in relation to service charges and related costs.

Tribunal members : Judge C A Rai
Mr M C Woodrow MRICS
Ms P Gravell .

In the County Court : Judge C A Rai.

Date and venue of the hearing : 13 and 16 February 2026,
Plymouth Tribunal Centre,
St Catherines House, 5 Notte Street, Plymouth
PL1 2TS.

Date of decision : 4 March 2026.

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decisions made by the Tribunal.

1. The Tribunal finds that the Respondent is not liable to pay the Applicant any of the service charges it has claimed.

Summary of the decisions made by the Court.

2. The Claimant is not entitled to recover any of the sums claimed. The Court makes no Order for costs.

Background

3. The subject property is Flat 4, 2-3 Stokes Lane, Plymouth, PL1 2LW, a leasehold flat.
4. 2-3 Stokes Lane is a purpose built three storey terraced building with a private yard behind it which is accessed from Stokes Lane through an undercroft beneath part of the first storey of the building. The Tribunal identified 12 marked parking spaces within the walled yard and three commercial refuse bins. The Tribunal were told that the building contains 12 flats. Individual mailboxes located in the ground floor hall were visible through the half glazed front entrance door on Stokes Lane. External storage cupboards are located in the front part of the wall to the left of the access beyond which is a second entrance into the building. The Tribunal did not carry out an inspection of the building. Its members walked past the building and into the yard. The Tribunal was not accompanied by either party.
5. The Respondent holds a long lease of the Property dated 30 September 1997, granted for a term of 125 years from 1 January 1995. Mr Gray was registered as proprietor of the Property on 5 July 2007. The Lease of the Property contains landlord obligations to provide services and tenant obligations to contribute towards the costs by way a variable service charge. Relevant provisions of the Lease are referred to in more detail later in this decision.
6. The Applicant employs a management company, currently Residential Management Group (RMG), which was responsible for the provision of the services at the Property and the collection of service charges during the period of the claim.

The proceedings

7. County Court proceedings were issued against the Respondent under claim number K68YX192 in the Civil National Business Centre on 20 July 2023. The Respondent filed a defence dated 22 September 2023. On 16 October 2023, the Court issued a Notice of Proposed Allocation to the Small Claims Track and directed that the parties complete a Small Claims Directions Questionnaire. On 20 December 2024, the claim was transferred to the Plymouth County Court.
8. District Judge Leech made an order dated 22 January 2025 (issued on 23 January 2025) transferring the claim to the First-tier (Property Chamber) for determination of those issues falling within its jurisdiction and for a Tribunal Judge, exercising the jurisdiction of a District Judge, to dispose of all or any remaining proceedings, including claims for costs and interest.

9. Directions were issued by Judge Dobson on 4 July 2025, in respect of both the Tribunal and the County Court proceedings. He directed that a video case management hearing take place to identify:-
 - areas of agreement and disagreement;
 - missing information required by either party;
 - the steps required to enable the determination of the proceedings;
 - whether the proceedings could be heard with other applications dealing with similar issues;
 - if other parties wished to join; and
 - if expert evidence was required.
10. The case management hearing took place remotely on 11 August 2025 before Judge Dovar who issued further directions on the same day (the August Directions).
11. The August Directions identified matters that the parties should consider in particular including:-
 - the service of the demands;
 - adherence to the service charge mechanism in the lease and the certification of service charge accounts;
 - whether any of the sums claimed by the Applicant had already been claimed in previous County Court proceedings made under Claim Numbers C16Y088 and (possibly) A28YM307, in which case it would be an abuse of process if these proceedings sought to recover any sums previously claimed;
 - whether any of the sums claimed are statute barred;
 - what services or works had been undertaken over the period of the claim;
 - if there had been a failure to adhere to health and safety obligations;
 - whether some, or all, of the charges claimed are recoverable under the lease; and
 - whether the Respondent should request that the further claims which he said had (by then) been issued in the County Court by the Applicant, be transferred to the Tribunal to enable all claims to be combined with these proceedings.
12. The August Directions set out the timetable for the exchange of statements of claim, witness statements and the provision of the hearing bundle.

The Hearing

13. The Applicant was represented by Daniel Jones of Counsel, instructed by PDC Law, solicitors with Mrs Roberts-Cossey, a property manager at Residential Management Group Ltd “RMG”, (the Managing Agent) in attendance as a witness. The Respondent leaseholder, Mark Roger Gray appeared in person.
14. The Applicant provided the Respondent and the Tribunal with a hearing bundle which comprised 702 Pages. The bundle contains duplicated documents. The Applicant had previously provided a 202 page bundle prior to the Case Management Hearing. References to numbers within square brackets in this decision are to the numbered pages of the hearing bundle.

Preliminary issues

15. At the start of the Hearing the Tribunal dealt with preliminary issues.

Case Management Application dated 12 February 2026.

16. On the day before the hearing the Applicant made a case management application for the inclusion of a supplementary bundle containing 71 pages.
17. No reasons were provided by the Applicant explaining why it had produced another bundle, why the evidence in it would assist the Tribunal at the hearing or why it had been sent to the Tribunal after 5 p.m. The Tribunal dismissed the application.

Application by Applicant to adjourn proceedings

18. Mr Jones made an oral application for the adjournment of the hearing. He expressed concerns about the content of the hearing bundle. He wanted an adjournment to enable the Applicant to submit a different bundle. By way of explanation he told the Tribunal that some service charge demands are missing from the bundle.
19. The Tribunal dismissed his application. In so doing, it reminded him that the Applicant had commenced the proceedings in 2023. The Applicant had responsibility for the preparation of the bundle. The Tribunal decided that it had already had adequate time to include all the information upon which it wanted to rely to prove its claim. It had been aware of the hearing date for some time. The hearing bundle was submitted to the parties and the Tribunal a week before the hearing. The Tribunal considered it was unfair to the Respondent and the Tribunal to attempt to introduce further information on the day before the Hearing.

Clarification of sums claimed

20. The sums claimed by the Applicant in the Claim Form are:-

	£
Arrears of reserve fund, reversal, service charge and service charge deficit	24,168.49
Court fee	1,102.22
Legal Representative's costs	100.00
Total	25,370.71

21. Mr Jones said that although the claim is for the recovery of unpaid service charges between 19 February 2015 and 20 September 2021, as expressed in the statement of claim made by PDC [88], it also included the payments dated 7 July 2022 and 20 September 2022 listed on the schedule of sums claimed [43 - 49]. He told the Tribunal that the Applicant has omitted to include information and evidence relating to the service charges demanded during the earlier years, in the bundle [43 - 49 and 383].

22. Later (during the second day of the Hearing) Mr Jones told the Tribunal that he had no instructions to make any concessions, but he had sight of all the “missing” demands relating to the earlier years of the claim. He accepted that since these are not in the hearing bundle, they are not “before the Tribunal”. He said that the invoice dated 20 September 2021 which he described as a “super invoice”, was intended to cancel all the previous invoices, which is why the earlier invoices were omitted from the bundle. He hoped to rely solely on the super invoice[309].
23. The super invoice had been accompanied by a letter from Mel Hickman of RMG dated 20 September 2021. That letter which has no postal address, on it although it refers to Mr Gray, stated that:-

“We RMG have adjusted the apartment and lift service charges for the period 2014 – 2021 in accordance with the Lease, which includes using the previous year end accounts for each year when setting the (sic) each annual service charge. Please find attached our amended invoice for £8,344.45 for this period with a breakdown of the adjustments and note that the balance outstanding on your account is £17,417.41” [307].

The invoice which accompanied the letter, also dated 20 September 2021, is addressed to Mr Gray at the Property. It lists payments four payments due for each year between 2014 – 2019, for Apartments Service Charges, Apartments Reserve, Lift Service Charges and Lift Reserve (24 items) and a single payment for Apartments Reserve in 2020 [309]. The figures shown on the invoice have not been totalled. Another invoice, also dated 20 September 2021, shows the three payments due for 2020 together with the amount of the quarterly payments for each of the four categories of payments during 2021 (16 payments) which total £8,344.45 and is the account balance referred to in Mel Hickman’s letter [311].

24. Mr Jones explained the figure of £24,168.49 as comprising:

	£
Reserve fund, reversal service charge and service charge deficit	19,878.49
Administration fees	2,190.00
Contractual costs	2,100.00
Total	24,168.49

25. Mr Jones also identified the “brought forward” balance of £8,722.85 (dated 31.01.2014) on an invoice dated 31 December 2014 (addressed to the Respondent) at the Property on 31 December 2014. In addition, he identified issues with the “copy” invoices included in the bundle [308]. The invoice is stated to be a “copy” of the original but he accepted it is not an accurate copy of the original because the “account balance” shown at the bottom is £32,424.52, which Mr Jones stated is the account balance on the date the invoice was extracted for inclusion in the bundle and not the actual balance due on 31 December 2014 which would have been shown on the original invoice. He did not inform us what amount of the balance which would have been shown on the original invoice but suggested, albeit not as a concession, that the Respondent

had not “owed” the Applicant £32,424.52 on that date. He said it is material that the balance of £8,722.85 was for service charges which preceded the period of this claim and are therefore not part of it.

26. Mr Jones referred the Tribunal to the only service charge demands which are in the bundle (other than the super invoice) which he described as three “quarterly invoices” and one invoice for balancing charges, and as “valid examples of actual invoices” sent to the Respondent by post, to the Property which are:-
- a. a demand dated 21 December 2021, addressed to the Respondent at the Property, for quarterly service charges payable on 1 January 2022. He said it was accompanied by the budget for 2022 and copies of the summary of the Tenants’ rights and obligations relating to both service charges and administration charges [323 – 332].
 - b. an invoice dated 21 March 2022, addressed to the Respondent at the Property, for his share of the year end deficit for the service charge year ending 31.12.2021 [333].
 - c. an invoice dated 23 February 2022, addressed to the Respondent at the Property, marked copy, which is for quarterly service charges due on 1 April 2022 [337].
 - d. an invoice dated 20 May 2022, addressed to the Respondent at the Property, for the quarterly service charges due 1 July 2022 which includes a demand for an Administration fee for £160 accompanied by a summary of the Tenants’ rights and obligations [338].
27. Mr Jones acknowledged that those four invoices, collectively demanding the balance of the annual service charges due in 2022 and the quarterly service charges due on account, in January April and July 2022 **are the only copies of actual demands relating to the service charges listed in the Applicant’s statement of claim.** [Tribunal’s emphasis]. He also referred to specific invoices for other administration charges (in addition to the charge of £160 demanded on 20 May 2022) being:-
- a. a demand (marked copy) for £34 dated 1 October 2022 addressed to the Respondent at the Property [371];
 - b. a demand (marked copy) for a legal fee of £432 dated 20 May 2022 addressed to the Respondent at the Property [369]; and
 - c. the administrative charges dated 19 May 2022 listed on the statement dated 5 January 2026 [383] which show the £432, £34 and £160 referred to above.
28. Mr Jones said that all the administrative charges had arisen because the Applicant had to chase the unpaid service charges. He submitted that since these all arise out of “breach” nothing else matters. The Tribunal reminded him there is no evidence about the service or the summary of rights and obligations having been sent with the demands (save in respect of the £160 included on the service charge demand dated 20 May 2022). It also drew his attention to what it termed the “misleading information” on the demands which refers to a risk of RMG charging different administration charges ranging between £34 and £40 in respect of unpaid service charges.

29. Mr Jones said that a service charge claim is a succession of claims and is not based upon a running total. He also accepted that there may be uncertainty as to what service charges had been paid by the Respondent. He suggested that the Tribunal could decide the amount of the actual payment and deduct those sums from the service charges claimed by the Applicant.

Respondent's submissions

30. Mr Gray submitted that the amount of the service charges claimed by the Applicant is unreasonable. He does not accept that the administration charges referred to on one of the invoices are legal costs. He explained that in 2014, £12,000 was stolen from the service charge account by the previous managing agent. Subsequently the freeholder, Christopher Parsonage, sold the freehold, allegedly for £12,000. The Respondent claimed that the leaseholders had tried to buy the freehold but has submitted no evidence to support that claim.
31. Mr Gray said that that following the sale to the current freeholder, the building had been mis-managed or not managed at all. He referred to earlier county court proceedings which had ceased following the Applicant failing to attend hearings [610]. He also referred to the subsequent claims issued after the commencement of these proceedings.
32. He also referred to what he termed “ongoing” health and safety failings; when challenged he identified that the lift had failed on several occasions. He suggested that it was not working for approximately a year but no actual evidence supporting this statement was provided. He referred the Tribunal to an email from Trevor Bloodworth, an employee of RMG dated 9 March 2023 [674] which said that the lift had been repaired and that the lack of funds had led to some quite bad situations but that he hoped that the increase in the budget would resolve the H&S issues on site. It also referred to temporary roof works.
33. On several occasions during the hearing Mr Gray alleged a connection between PDC, the solicitors representing the Applicant, and RMG but no actual evidence in support of his allegations was provided, neither was the relevance of such a claim to the proceedings identified or explained. He said however that he contended that such persistent neglect is incompatible with the recovery of any service charges. [611].
34. Mr Gray said that he had found it difficult to follow Mr Jones submissions. From what he had followed, Mr Jones could only produce copies of four “valid” demands. He said he had not received any of those demands but even if the Tribunal considered these were served on him, none was preceded by the service charge statement as required in the lease.
35. Mr Gray considered that in making what he described as “ten separate claims for overlapping sums” the Applicant has behaved unreasonably and that behaviour constitutes an abuse of process.

36. Mr Gray said it was difficult to reach PDC by phone. He said he had “paid enough”. With the assistance of Mrs Roberts-Cossey it was established and agreed that payments of £827.17, £722.44, £350, £80 and £115 had been received from Mr Gray by PDC during the period of the claim. [375, 376 & 383]. This included a payment which Mr Gray initially claimed had been lost but which had apparently been transferred to RMC without a reference so was initially not allocated to Mr Gray’s account.
37. Mr Gray referred the tribunal to copies of emails exchanged with PDC showing that he had engaged with them and was insistent that he had asked PDC to correspond with him electronically on numerous occasions, but they consistently had failed to do so. He said that that firm had never been prepared to negotiate with him with regard to the amount the Applicant was claiming [676].
38. Mr Gray said that the Halifax had deducted two substantial sums from his mortgage account. The Tribunal accepted this evidence, but from the information which was disclosed during the proceedings, it identified that three sums were charged to his mortgage account, all of which appeared to relate to later County Court Claims. Mr Gray said there is a duplication of costs but provided no evidence of any duplication of the administrative and legal costs which form part of these proceedings being part of the sums “paid” to satisfy the sums taken from his mortgage account in relation to those later proceedings.
39. He also said that in any event some of the amounts included in the current claim are “out of date”. He claimed that there is no evidence that valid demands or notification of sums claimed was given within 18 months of service charges being incurred and he referred the Tribunal to section 20B of the Landlord and Tenant Act 1985 (the Act).
40. With the assistance of an extract from a building society statement in the bundle the Tribunal were able to establish that the following sums were paid to PDC by the Halifax, Mr Gray’s lender.
- | | | |
|--------------|-------------------|-------------------------------|
| 17.07.2024 | £4,267.27 | Receipt PDC (payment Halifax) |
| 21.11.2024 | £6,783.76 | Receipt PDC (payment Halifax) |
| 04.12.2024 | £9,650.71 | Receipt PDC (payment Halifax) |
| Total | £20,701.24 | |

41. By referring to a ledger that she was able to access from her laptop, Mrs Roberts-Cossey confirmed, that the following amounts were paid to RMG by PDC solicitors.
- | | |
|--------------|-------------------|
| 31.07.2024 | £1,761.27 |
| 19.12.2024 | £3,649.76 |
| 19.12.2024 | £4,559.71 |
| Total | £9,970.74. |
42. The Tribunal concluded that the difference between the totals in paragraphs 40 & 41, £10,731, has been retained by PDC presumably as costs, relating to a period postdating this claim.
43. When summarising his defence to the claim Mr Gray concentrated on payability and reasonableness. He also suggested that the claim might be out of date. This was despite the Tribunal having explained to him that this is a contractual claim. It suggested to him that as a leaseholder he is bound by the terms of his lease to pay service charges; furthermore, it explained that in those circumstances, his suggestion that any of the amounts claimed could be statute barred was not accepted.
44. Mr Gray alleged that the service charge demands had not been served on him. He said he had never seen the service charge accounts until PDC had sent him copies during the course of disclosure of information prior to the preparation of the bundle. The Applicant claims that the majority of the demands were sent to him at the Property. There is a record of an alternative address in Dursley, but Mrs Roberts-Cossey suggested that eventually post was returned from that address after which all demands were sent to the Property. She did not identify the date when that occurred.
45. In response to questions from the Tribunal, Mr Gray accepted that any service charges demanded for communal electricity and insurance would be reasonable.
46. Mr Gray's submission is that the Applicant cannot recover service charges because it has not complied with the service charge recovery machinery in the lease. He said he obtained legal advice which was that the service charges are only recoverable when that has been done.
47. Clause 3.2 of the Lease requires the Tenant to pay the service charge calculated in accordance with third schedule on the dates stated [17].
48. **"Service Costs"** are defined in the Lease as the amount the Landlord spends in carrying out all the obligations imposed by this Lease.....and not reimbursed in any other way..... and the "final service charge" means 8.33 percent of the service costs save that where the cost relates to the lift the percentage shall be 9.091 per cent of such costs [27]. (It was established that all 12 flats contribute to the service charges other than those which relate to the lift. 11 flats contribute to the service charges (including any reserves) relating to the lift).

49. **“Interim service charge instalment”** means a quarterly payment of £125 on account of the final service charge until the Landlord gives the Tenant the first service charge statement (mentioned below) and after that it is a quarter of the final service charge on the latest service charge statement.
50. Mr Gray said that he had obtained legal advice because he had never received a service charge statement. He had been advised that he would not be liable to pay the interim service charge instalment until he had been “given” the service charge statement for the preceding year, after which he would be obliged to pay an instalment, based on his share of the charges during the previous year.
51. He said he had not received many service charge demands. He did not disclose which he had received. He told the Tribunal that he mainly lives and works abroad and has visited the property occasionally over the years, but little more than once a year. He then suggested no more than 10 times during a period of 7 years. He told the Tribunal that the Property was not let but is used by his friends and family.
52. Mr Gray said that Applicant has never considered whether or not the demands were validly served. He submits that it is by “giving the service charge statement” which triggers his liability to pay; he does not believe he is liable to pay any of the charges claimed until the statements described in the Lease are produced to him
53. Mr Gray told the Tribunal that had not seen any service charge accounts until the accounts in the bundle were sent to him by PDC as part of the pre-hearing disclosure. The only reference to accounts having been sent to him in the bundle is in the 2021 letter from Mel Hickman which was not addressed to an named leaseholder [331]. The copy accounts in the bundle are not signed by a named individual but signed in the name of the accountancy firm. He claimed that even if these accounts are accurate, they were not sent to him and even if they had been, they do not satisfy or comply with the landlord’s obligations in the Lease.
54. Mr Gray said the accounts should have been circulated to leaseholders within six months of year end.
55. Mr Gray also referred to a £15,000 charge for internal painting and to the fact that a suggested estimated charge for replacement of the roof was based on a visual inspection from ground level when a drone inspection revealed that a much less expensive repair would be adequate. It was not clear whether this estimate relates to the period of the claim and the Tribunal found no evidence in the bundle of any charges relating to the repair of the roof.

The Law and the Lease

56. Extracts from the relevant sections of the Act and the Commonhold and Leasehold Reform Act 2002 (CLARA) are set out in the Schedule to this decision.
57. The Applicant relied on clause 5.7 of the Lease which stated that the rules as to the service of notices in section 196 of the Law of Property Act 1925 apply to any notice given under the lease, [24] which broadly provides that any notice shall be in writing and any notice served on a lessee shall be sufficient if addressed to the lessee without his name if left at the last know place of abode in the UK or sent by post.
58. The Respondent referred to section 20B of the Act suggesting that the demands for service charges were out of date. That section imposes a time limit on the recovery of relevant costs which must be demanded within 18 months of those costs being incurred unless the tenant is notified within that period that the costs have been incurred and that he would be expected to pay. The Applicant relied on case law as authority that information in the service charge accounts would constitute notice of costs incurred and not yet demanded.
59. Section 19 of the Act states that relevant costs (defined in section 18 as being variable costs incurred for services repairs maintenance insurance or landlords' costs of management) are only to be taken into account to the extent that they have been reasonably incurred and where they relate to the provision of services or works if the services are of a reasonable standard.
60. Section 27A of the Act enables an application to be made to this tribunal for a determination whether a service charge is payable and if it is by whom, to whom, the amount, when it is payable, and the manner in which it is payable. The application may be made regardless of whether or not any payment has been made. Application can also be made in relation to payments demanded on account of actual service charges.
61. The Lease contains various provisions relating to the payment of service charges by the tenant and the calculation of the sums due.

Clause 3.2

TO pay the service charge calculated in accordance with the third schedule on the dates stated there

Paragraph 1 of the Third Schedule defines Service Costs and interim service charge instalment.

“Service Costs” are defined in the Lease as the amount the Landlord spends in carrying out all the obligations imposed by this Lease.....and not reimbursed in any other way..... and the “final service charge” means 8.33 percent of the service costs save that where the cost relates to the lift the percentage shall be 9.091 per cent of such costs [27].

“interim service charge instalment” means a quarterly payment of £125 on account of the final service charge until the Landlord gives the Tenant the first service charge statement (mentioned below) and after that it is one quarter of the final service charge on the latest service charge statement.

Paragraph 2 states that:-

The Landlord must

- (a) keep a detailed account of service costs
- (b) have a service charge statement prepared for each period ending 31st December during the lease period which:
 - (i) states the service costs for that period with sufficient particulars to show the amount spent on each major category of expenditure
 - (ii) states the amount of the final service charge
 - (iii) states the total of the interim service charge instalments paid by the Tenant
 - (iv) states the amount by which the final service charge exceeds the total of the interim service charge instalments (“negative balance”) *of vice versa* (“positive balance”)
 - (v) is certified by a member of the Institute of Chartered Accountants in England and Wales that it is a *faire* summary of the service costs set out so that it shows how they are or will be reflected in the final service charge and is sufficient supported by accounts receipts and other documents which have been produced to him.

[The spelling and grammatical errors shown in italics reflect the wording of the lease]

Paragraph 3 states:-

On each day on which rent is due under this lease the Tenant is to pay the Landlord an interim service charge instalment.

- (a) If a service charge statement shows a positive balance the Landlord must pay that sum to the Tenant when given the statement
- (b) If a service charge statement shows a negative balance the Tenant must pay that sum to the Landlord within fourteen days after being given the statement
- (c) If a service charge statement shows a positive balance the Landlord must pay that sum to the Tenant when given the statement

- (d) If a service charge statement shows a negative balance the Tenant must pay that sum to the Landlord within fourteen days after being given the statement

The Fifth Schedule relates to the Reserve Fund
Paragraph 1 is set out below

The Landlord maintains a reserve fund to accumulate in advance the expected cost of the following items of work to the building (“reserve fund works”)

- (a) replacing the lift
- (b) major repairs to the roof and foundations
- (c) exterior decoration

Paragraph 2 states that the reserve fund is to be held in trust

Paragraph 3 is set out below

The Landlord estimates the contribution needed by the reserve fund each year and that sum is a service cost when calculating the service charge

[Other provisions not relevant to this decision have not been referred to]

Reasons for the Decision

Findings based on the written and oral evidence

- 55. The Applicant seeks to recover £19,878.49 which it claims to be service charges, including reserve fund contributions, demanded from the Respondent during the period of the claim and not paid.
- 56. Its evidence of the amount claimed is dependent upon the service charge statement and accounts which it states in the statement of case, dated 3 November 2025, have been issued in accordance with the Lease and available on the RMG Living portal since June 2025 [89].
- 57. No evidence was provided to the Tribunal which convinced it of the veracity of that statement. It does not understand why the statement of claim referred to documents being available via the RMG Living portal since June 2025. That date is some time after the claim was issued in the County Court and postdates the period of the claim.
- 58. The only letter in the bundle from RMG to the Respondent which referred to a copy of the accounts for the preceding year being available to the leaseholders, is a letter dated 21 March 2022 from RMG addressed not to the Respondent by name but “TO THE OWNER”. The Tribunal does not know whether or not this letter was sent to any or all of the leaseholders. The letter states that a copy of the accounts for 2021 have been uploaded to the RMG Living portal but

contains no link, just instructions [331]. It appears to contradict the Applicant's statement of claim.

59. Mr Gray consistently stated that he had not seen the accounts for any year within the period of the claim until these were produced to him in the course of the proceedings. In the absence of the production of any other letter referring to the accounts, particularly during the earlier years of the claim, the Tribunal concluded it unlikely that copies of the accounts included in the bundle were sent to the Respondent before being disclosed in these proceedings.
60. The Applicant's witness statement is made by Mrs Roberts-Cossey who attended the hearing. She is the current Property Manager. She appeared to the Tribunal helpful efficient and knowledgeable about the current management of the building. When asked questions she responded with clarity.
61. Mrs Roberts-Cossey provided a witness statement in support of the claim, the last sentence of paragraph 1 of which reads- "*I make this state (sic) from my knowledge of the case from studying the file of papers in respect of it*". When the Tribunal asked her if she had any actual knowledge of the Property during the period of the claim, she confirmed that she does not. She is not currently based in Plymouth. The Tribunal therefore concluded that Mrs Roberts-Cossey's written evidence is of limited assistance to it.
62. Mrs Roberts-Cossey told the Tribunal during the hearing it appeared to her that the super invoice was issued because historically the managing agents had not divided service charges between the 12 leaseholders correctly in accordance with the lease. It was implied that they might have split the charges equally between all twelve tenants and only later corrected the charges. None of this is relevant to the Respondent's liability to pay his share of the service charges as his lease clearly states that he is required to pay 1/12 of the service charges relating to the Property and 1/11 of the charges relating to the lift.
63. The documentation in the bundle and copies of those demands included and the statements, all show that the quarterly charges were split into separate amounts, the general "on account" service charge and reserve contribution and the "on account" lift service charge and lift reserve contribution together being the quarterly payments, referred to in the Lease. The leaseholder of the ground floor flat does not contribute towards the lift service charge or the lift reserve fund. The Tribunal is satisfied that the Lease enables the recovery of a service charge and an additional reserve fund charge. It does not provide for a split between the general service charge and the lift service charge, but such a split would facilitate the calculation of the different division of those charges between the 12 leaseholders.
64. The Respondent's interpretation of the lease is that the interim service charge instalment is a quarterly charge of £125 on account of the final service charge until the Landlord gives the tenant the first service charge statement as mentioned below and after that it is a quarter of the latest service charge statement.

65. Whilst Mr Gray consistently stated he had not received a service charge statement from the Applicant during the period of the claim he did not disclose if he had received such a statement from either the previous (original) landlord or his managing agent and what quarterly sum was being demanded prior to the period of the claim, or whether he had regularly made payments.
66. The Applicant claimed that the accounts which it has now disclosed constitute the service charge statement described in the Lease and contain sufficient information to show the amounts spent on each service charge category. It submitted that the accounts also state the amount of the final service charge. However, the Tribunal find that the Lease requires that the statement should also state the total of the interim service charge instalments paid by the tenant, which the Tribunal interprets as meaning the total of the sum paid by each tenant during the relevant service charge year.
67. Mr Jones did not accept that interpretation, which he acknowledged would require the landlord to issue individual statements to each leaseholder. He said that there would be no business efficacy in the Landlord being obliged to do that. He said that the production of the annual accounts was sufficient. However, his submissions do not assist the Applicant if the accounts were not produced to the Respondent.
68. The Tribunal heard evidence that an adjustment in the calculation of the interim service charge was made during 2021. A letter 20 September 2021 from RMG to Mr Gray refers to this adjustment and also refers to it using the previous year end accounts for each year when setting each annual service charge. The letter refers to the period between 2014 to 2021 and confirms that the calculation of the interim service charge had not been carried out in accordance with the Lease [307] [511].
69. The Tribunal concluded that that letter could be interpreted as confirmation that year end accounts had not been disclosed to leaseholders until after 20 September 2021. The Tribunal were not provided with evidence as to why that adjustment was made. The letter invited Mr Gray to contact Mel Hickman and contained her email address.
70. During the hearing Mr Gray said he did not know who Mel Hickman was, whether it was a he or she, and that he had not had any contact with him/her. He did not confirm whether or not he had received that letter. The second “undated” copy of the letter in the bundle contains three paragraphs after the signature of Mel Hickman Property Manager [511].

Could you reverse the apartment and lift service charges/reserve contributions for 2021, see below for the replacement charges.

Could you also reverse all earlier service charges/reserve contributions and any sur/def charges. That includes the sur/def charges applied in May 2021 and should take us back to October 2014.

Could you then apply the charges as shown in this excel doc, for all years shown, that is 2014 to 2021. These can be an annual figure for the years 2014 to 2020 and then quarterly charges for 2021.

71. The Tribunal concluded that the additions on what it has assumed to be a copy of the Respondent's file copy of the letter would appear to be instructions addressed to another member of RMG to alter service charge records presumably for Mr Gray although that is not entirely clear.
72. On the next page of the bundle, following the annotated letter is a statement addressed to Mr Gray and dated 11 April 2024 [512]. That statement cannot have been sent with the letter referred to above, since it postdates the period of this claim and does not assist the Tribunal, but the nature of the bundle, and the haphazard order of the contents means that the Tribunal cannot draw any inference from that.
73. The Tribunal could have examined other documents in the bundle and identified similar anomalies, but such an exercise would be of limited use and benefit within the context of these proceedings and would not further its overriding objective. It found the bundle poorly ordered and difficult to negotiate. For an undisclosed reason, the Applicant also sent four hard copies of the bundle to the Tribunal's London Hearing Centre.
74. On the basis of the documents in the bundle and the submissions made to it, the Tribunal has concluded that that it has not received sufficient evidence to convince it that any service charge demands had been sent to the Respondent other than possibly three demands for service charges referred to by Mr Jones:-
- a. a quarterly demand for on account service charges due on 1 January 2022 [323];
 - b. a demand dated 21.03.2022 for the year end deficit for 2021[333];
 - c. a quarterly demand for on account service charges due on 1 April 2022 (to which no summary of rights and obligations is attached) [337]; and
 - d. a quarterly demand for the "on account" service charges for July 2022 which also includes a demand for £160 for an administration charge dated 20 May 2022. VAT is shown separately which leads the tribunal to believe that this is a legal fee charged by PDC, but the invoice is no attached [338]
75. The demand for the deficit would only be recoverable if it had been preceded by the service charge statement referred to in the Lease.

Interpretation of the Lease

76. The Tribunal interprets the wording in the Third Schedule to the Lease as requiring the landlord, following the end of each service charge year, to prepare a separate service charge statement for each leaseholder which states:-
- a. the service costs for the service charge year,
 - b. the total amount of the final service charge
 - c. the total of the **interim service charge instalments** paid by the tenant and
 - d. the difference between the amount paid and the leaseholders' share of the actual expenditure.

77. The Lease does not require the landlord to circulate accounts. It requires the landlord to send a statement showing what the tenant paid in the previous year and whether that amount was sufficient to cover the actual **service costs**. The provision of a “running balance” of the total indebtedness of a tenant, arising from a failure to pay earlier service charges would not, in the Tribunal’s view, comply with paragraph 2 of the Third Schedule because that refers to the service charge statement for each period ending 31 December [27].
78. Additionally the statement must be certified by a member of the Institute of Chartered Accountants in England and Wales that it is a fair(e) summary of the service costs set out so that it shows how they are or will be reflected in the final service charge and is sufficient(ly) supported by accounts receipts and other documents which have been produced to him.
79. After it has given the statement to the tenant the landlord can collect any balance due (negative balance) or repay any overpayment, (positive balance) and demand an **interim service charge instalment** which is a quarter of the final service charge instalment in that service charge statement (the latest service charge statement). Those sums would be payable on the usual payment days [28].
80. Had the Applicant provided such a statement, the **interim service charge instalment** demanded for January of each service charge year and possibly also for April, because it could not change the amount of the **interim service charge instalment** until it had reconciled service charge expenditure with service charges demanded in the preceding year, would be the same as that demanded in the previous service charge year. That on account amount will only change later in the year following the production of the accounts and the issue of the statement. (The accounts in the bundle are dated between 5 March and 11 July), so it is unlikely that a landlord would issue such a statement until after accounts were prepared).
81. The Accounts in the bundle for 2021 are dated 2 March 2022. The Tribunal is not satisfied that the accounts, even if supplied to the Respondent with the demands for service charges in 2022, (and there is no evidence that this occurred), are sufficient to satisfy the provisions of the Lease and enable the landlord to demand a different **interim service charge instalment**.
82. Mr Jones accepted he was only able to provide evidence of three service charge demands. These demands, on the face of the copies supplied, appear to have been sent to the Respondent at the Property between December 2021 and May 2022.
83. Although the accounts for 2021 are dated 2 March 2022 and a separate demand for the difference between service costs and interim service charge instalments has been disclosed [333] which shows a deficit, there is no difference between the **interim service charge instalment** demanded on the invoice dated 21 December 2021 (which should be based on the 2020 accounts) [323] and the amount demanded on the invoice dated 20 May 2022 for the **interim service charge instalment** due on 1 July 2022 [338].

84. For all of those reasons the Tribunal is satisfied that even if it accepted that the service charges demanded by three of the four invoices might be recoverable, as Mr Jones suggested because they constitute compliant demands, the amount demanded is unlikely to match the amount which should have been demanded had the Applicant calculated the demand in accordance with the service charge provisions in the Lease.
85. The balancing charge demanded on the service charge demand dated 21 March 2022 [322] would have been due had it been preceded accompanied by the service charge statement. The Tribunal has not seen any evidence that the Applicant circulated the accounts before demanding that payment.
86. Therefore, the Tribunal determines the sums demanded in the four invoices relied upon by the Applicant are not recoverable from the Respondent.
87. However the Tribunal finds that the Respondent was liable to pay interim service charge instalments throughout the period of the claim. His liability is contractual and arises from the date he acquired the Property but is also dependent upon the correct demands having been issued in accordance with the provisions of the Lease.
88. It is impossible for the Tribunal to calculate the amount of the charges which would have been payable during the period of this claim. The lease states that the interim service charge instalment will be £125 per quarter until the tenant is given a service charge statement. Whilst the Tribunal might assume that when the Respondent purchased the flat the quarterly on account charge would have exceeded that amount it has no evidence what was demanded.
89. In these proceedings it has not been provided with copies of any valid demands sent to the Respondent.
90. In his defence, the Respondent put forward various other reasons for being unwilling to pay the service charges which the Applicant has claimed. It is not now necessary for the Tribunal to consider those submissions in any detail.

The variable administration charges

91. Mr Jones stated during the hearing that the Applicant would pursue the administration charges as contractual costs as part of its claim in the County Court. The Tribunal therefore has not determined the recoverability of those costs as part of the Tribunal proceedings, save but to note the Applicant's evidence with regard to the issue of demands.

Cost Limitation Orders

92. The Respondent has not made an application for either a Section 20C Order (LTA) or an Order under Paragraph 5A of Schedule 11 to CLARA. The Tribunal suggested that he might wish to consider making an application but must do so promptly. Mr Jones confirmed that he would oppose any application for both orders because the Applicant may wish to recover such costs, as relevant costs.

County Court issues

93. Following the transfer of the proceedings to the Tribunal by District Judge Leech, the Tribunal directed the parties that any claims in relation to costs will be dealt with by the Judge as a County Court Judge.
94. I therefore sat alone as a Judge of the County Court exercising the jurisdiction of a District Judge and heard those matters that fall within the jurisdiction of the Court.
95. Taking account of the rules of natural justice, I asked that both parties address me in relation to those points that they wished me to consider in making my decision.
96. The Defendant was not represented throughout these proceedings. He thanked Counsel for explaining the separation of the issues which the Court has to consider.
97. It was important in the interest of natural justice to offer the Defendant an opportunity to explain why he had not paid the service charges demanded and why he defended the claim.
98. I was grateful to both parties for their co-operation with each other and for Counsel's assistance to the Defendant, acknowledged by him during the Hearing.
99. Where I have referred to numbers within square brackets these refer to the numbered pages of the hearing bundle.

Decision and Reasons

100. The Claimant claimed:-
 - a. Service charges for the service charge years between 2014 and September 2021 including the reserve fund £19,878,49; and
 - b. costs and administration fees of £4,290; and
 - c. Fixed costs £1,202.22.

Total £25,370.71
101. In these proceedings the Defendant is the successful party. The Tribunal found, for the reasons contained in its decision that none of the service charges reserve fund or reversal fund, for the period of the claim is recoverable by the Claimant.
102. I agree with the FTT's findings. Since the Claimant decided to seek recovery of its administration costs as contractual costs they are included solely within this application.
103. Since the Defendant has succeeded and the Claimant has lost it cannot recover any of its costs and I therefore make no order for costs.

Applications made under section 20C of the Landlord and Tenant Act 1985 (the Act) and paragraph 5A of schedule 11 to The Commonhold and Leasehold Reform Act 2002 (CLARA)

84. The Defendant applied to me to make both of these orders and having considered his applications I agree that it is just and equitable to make an order under section 20C of the Act that the costs incurred by the landlord in connection with the costs of these proceedings before the Court are not to be regarded as relevant costs to be taken into account in determining the amount of service charges payable by the (Defendant) tenant.
85. I have also decided that it is just and equitable to make an order under paragraph 5A of schedule 11 to CLARA extinguishing the Defendant's liability to pay an administration charge in respect of litigation costs.
86. I make both orders because, despite the Defendant succeeding, the Claimant suggested that it may wish to seek to recover its costs as "relevant costs" within the definition contained in the Act..
87. I find it just and equitable that the Applicant's legal costs of these proceedings are not recovered from the Defendant. In my view this would and should include the time spent by the managing agent's representative attending this hearing, because although she assisted Mr Jones, she had no direct involvement with the Property during the period of the claim, as was recorded in her witness statement.

SCHEDULE

The Landlord and Tenant Act 1985

Extracts

19.— Limitation of service charges: reasonableness.

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

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

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

and the amount payable shall be limited accordingly.

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

[...]¹[...]²[

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.]³

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]² for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to [the appropriate tribunal]² for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
- (b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter. [...]³

]¹

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

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

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

1B Notice to accompany demands for service charges

(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.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [, residential property tribunal]² or leasehold valuation tribunal [or the First-tier Tribunal]³ , or the [Upper Tribunal]⁴ , or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to [the county court]⁵ ;

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

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

[(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;]⁶

(c) in the case of proceedings before the [Upper Tribunal]⁴ , to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to [the county court]⁵ .

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

Commonhold and Leasehold Reform Act 2002

Extract

Schedule 11

5A

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

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “*litigation costs*” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “*the relevant court or tribunal*” means the court or tribunal mentioned in the table in relation to those proceedings.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal

.....

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 office which has been dealing with the case.
2. 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.
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 a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

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 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 Regional Tribunal office within 21 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 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.