9983

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2013/0608**
Property	:	**Flat 4, 36 Buckingham Gate, London Sw1E 6PB**
Applicants	:	**Mr Jeremy White** **Mrs Philippa White**
Representative	:	**Mr T C Dutton QC Counsel**
Respondents	:	**Enfranchisement Investment Properties LLP (R1)** **36 Buckingham Gate Limited (R2)**
Representatives	:	**(R1) None** **(R2) Mr S Murch Counsel**
Type of Application	:	**Section 27 Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Members	:	**Judge John Hewitt Chairman** **Mr C P Gowman MCIEH MCMI BSc** **Mrs L L Hart**
Dates and venue of Hearings	:	**3 and 4 February and 12 March 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**5 June 2014**

DECISION Rev 3

Decisions of the Tribunal

1. The Tribunal determines that:
   - 1.1 The second respondent (R2) is entitled to recover service charges from the applicants;
   - 1.2 The proportion of the Schedule 1 service charge expenditure payable by the applicants to R2 is 3.85%;
   - 1.3 The notice dated 22 June 2011 [1301A] (in respect of 2010) was not given to the applicants by R2;
   - 1.4 The notice dated 22 June 2011 (incorrectly for 2012) [1312] was given to the applicants by R2 and that it is a valid notice for the purposes of section 20B of the Act;
   - 1.5 The service charges incurred by R2 and to which the applicants are obliged to contribute and which are in dispute between the parties are determined as set out in the relevant paragraphs below; and
   - 1.6 Any further applications which either party may wish to make on the matters mentioned in paragraph 184 below shall be made in accordance with the directions set out in paragraphs 184-186 below.

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 30 August 2013 the tribunal received an application from the applicants (together the Whites otherwise Mr or Mrs White as the case may be) pursuant to section 27 of the Landlord and Tenant Act 1985 (the Act) [1]. There was also a related application made pursuant to section 20C of the Act as regards any costs which the second respondent (R2) might incur in connection with these proceedings.

4. The Whites sought a determination of the amount of service charges payable by them in respect of the years 2010 (part), 2011, 2012 and 2013.

5. Directions were duly given on 2 October 2013 [19] and subsequently slight adjustments were made to the timetable [28 and 29].

6. The application came on for hearing before us on 3 and 4 February 2014. The Whites were represented by Mr T C Dutton QC of counsel. The first respondent (R1) was neither present nor represented and took no part in these proceedings. We shall explain why that was shortly. R2 was represented by Mr S Murch of counsel.

   At the commencement of the hearing the chairman, Judge John Hewitt, informed the parties that some while ago, when engaged in private practice as a solicitor, he had from time to time instructed Mr Dutton, amongst other counsel, on behalf of some of his clients. No objections

were taken and no applications were made that Judge Hewitt should recuse himself.

Oral evidence was given by Mrs White on behalf of herself and her husband, and by Ms Simone Carlon, head of operations with Pembertons Property Management (Pembertons) who are now the managing agents. Both witnesses were cross-examined on their evidence.

7. We reconvened on 12 March 2014. At the commencement of the hearing Mr Murch made an application for permission to recall Ms Carlon to give evidence on a matter concerned with the cost of electricity to be attributed to the running of the lift. Mr Dutton did not object to the application and Ms Carlon gave her further evidence on which she was cross-examined quite closely. There then followed closing submissions by Mr Murch and Mr Dutton. Time did not permit us to make a site visit to the subject development but we concluded that such a visit would not assist us to determine the matters before us.

The development and the title structure – not in dispute

8. 36 Buckingham Gate is an Edwardian Mansion block which now comprises some 36 self-contained flats. Over the years there has been some modification to the number of flats and to the layout and sub-division of some of the flats.

9. So far as we are aware all of the flats have been sold off on long leases.

10. The Whites are the lessees of flat 4 which is a 2 bed-room ground floor flat. We shall set out material provisions of the lease of this flat shortly.

11. The freehold title was registered at Land Registry in 1954 under title number NGL336958 [706].

Until about 2006 the freehold of the development was vested in Continental Property Ventures Inc, an off-shore company, which the Whites believe may have been controlled by a Mr David Horsfall. Evidently the style and quality of management was not good and there were service charges issues. An application was made to the Leasehold Valuation Tribunal (LVT) which resulted in a decision in favour of the Whites that they were entitled to a repayment of £3,406.92, a decision upheld on appeal.

Then the freehold was transferred to another off-shore company, Forvaltningsaktiebolaget Paletten (Forval) which the Whites also believe was controlled by Mr Horsfall.

As from 1 March 2007 Forval instructed Farleys Management Limited to be the new managing agents. Subsequently Farleys was taken into the Peverel Group and the business was transferred to Pembertons.

12. Subsequently a majority of qualifying tenants collaborated to exercise the right to a collective enfranchisement and R2 was named as the nominee purchaser. So far as we are aware the members of R2 are also some of the long lessees of flats within the development. The address of each of the four current directors of R2 is a flat within the development. On 29 August 2008 R2 was registered at Land Registry as the proprietor of the freehold interest. Land Registry has recorded that the price said to have been paid on 22 August 2008 was £1.5m.

13. Not all of the long lessees participated in the enfranchisement. As is not uncommon in our experience an investor will often step into the shoes of a non-participant lessee and make a contribution to the cost of acquisition of the freehold. This is often by way of a participation agreement, in return for the grant of a long lease, typically 999 years, of the flat subject to and with the benefit of the existing lease. Such a lease is sometimes referred to as an overriding lease. The lessee under such an overriding lease will be the reversioner so far as the lessee of the occupational lease is concerned and takes a view that at some future time the occupational lessee will wish to seek an extended lease under the enfranchisement legislation. There is then scope for a transaction to take place whereby the investor is able to cash in his investment and, he would hope, make a profit.

14. The Whites did not participate in the collective enfranchisement. R2 granted to an investor R1 an overriding lease of flat 4. The lease is dated 25 September 2009 and granted a term of 999 years from 22 August 2008. A copy of the lease is at [711]. The lease was registered at Land Registry on 15 October 2009 with title number NGL906761 [725].

15. A material provision of the overriding lease is clause 8.1 [718] which is in these terms:

> *"8.1 The Tenant hereby assigns to the Landlord the benefit of the lessee's covenant under the Subsisting Lease to pay service charges for the duration of the Waiver Period only (and the Tenant covenants promptly to give notice of this assignment to the lessee of the Subsisting Lease) and the Landlord hereby waives the obligation under the corresponding lessee's covenants contained in this lease for the duration of the Waiver Period only"*

For the purposes of the above provision the Tenant is R1 and the Landlord is R2. The Subsisting Lease referred to is the occupational lease vested in the Whites (which lease is mentioned below) and the Waiver Period is defined in clause 8.3 as being the period from the date of the [overriding] lease to the earlier date of the determination of the Subsisting Lease or the date on which the Subsisting lease is transferred to the registered proprietor of the [overriding] lease or any person connected to such registered proprietor.

16. At [588] is an undated document given by R2 and received by the Whites on 10 August 2013 in the following terms:

*"**FROM:***

36 Buckingham Gate Limited
136 Pinner Road
Northwood
Middlesex
United Kingdom
HA6 1BP

TO;
Mr Jeremy George Geoffrey Nethercote White (1) &
Mrs Phillippa Gay Orr White
Flat 4
36 Buckingham Gate
London SW1E 6PB

Dear Sir & Madam

Notice of Assignment

*We refer to the lease dated 5th May 1977 made between (1) Firmcourse Limited and (2) Jeremy George Nethercote White and Philippa Gay Orr White, which is currently held between you, as tenant, and the Enfranchisement Investment Properties LLP, as landlord (**Contract**).*

*We hereby give you notice that on 25th September 2009, Enfranchisement Investment Properties LLP (**Assignor**) assigned to 36 Buckingham Gate Limited (**Assignee**) , with effect from 25th September 2009, all its rights, title, interest and benefit under clause 8 of the Contract. Note that this assignment creates a contractual relationship between you and the Assignee.*

Please refer all future correspondence, dealings, deliveries, and payments in respect of the Contract to the Assignee.

This notice (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this notice or any act performed or claimed to be performed under it) shall be governed by and construed in accordance with the laws of England and Wales.

Yours faithfully

[manuscript signature – illegible]

Signed for and on behalf of 36 Buckingham Gate Limited

The Whites' lease

17. The lease vested in the Whites is at [690-704]. It is dated 5 May 1977. It was granted by Firmcourse Limited and granted a term of 99 years from 25 December 1971. The lease is registered at Land Registry with title number NGL306181.

18. Material provisions of the lease are as follows:

> "2. *THE Lessee for himself and his assigns to the intent that the obligations may continue throughout the term hereby created hereby COVENANTS with the Lessor as follows that is to say:-*
>
> *(1) To pay the reserved rent ...*
> *(2)(a) To pay and contribute to the Lessor a proportionate part (to be determined according to the proportion which the rateable value of the Flat at the commencement of the Term hereof bears to the aggregate rateable values of the flats comprised in the said Building including the Flat of:*
> *(i)* [insurance]
> *(ii)* [water rates]
> *(iii)* [maintenance repairs and redecorations]
> *(iv)* [staff]
> *(v)* [rents, rates, taxes and telephone charges]
> *(vi) the cost of all other services which the Lessor may at its absolute discretion provide or install in the Building for the comfort and convenience of the lessees*
> *(vii) such sums as the Lessor shall reasonably consider necessary from time to time to put to reserve to meet the future liability of carrying out major works to the Building or the demised premises with the object as far as possible of ensuring that the contribution shall not fluctuate substantially in amount from time to time*
> *(viii) the fees of the Lessor's Managing Agents for collection of the rents of the flats in the Building and for the general management thereof*
> *(b) The amount of such contribution shall be ascertained and certified by the Lessor's Managing Agents (whose certificate shall be final and binding on both parties hereto) once in a year on the twenty fifth December in each year commencing on the 25th December 1977. The Lessee shall on the execution*

hereof pay the sum of one hundred and two pounds 65p on account of the contribution for the year ending the 29th September [?] and thereafter shall on the 25th March and the 29th September in each year pay a sum equal to one half of the amount payable by the Lessee for the preceding year under the provisions of this Clause on account of such contribution and shall on demand pay the balance (if any) ascertained and certified as aforesaid ..."

19. It is to be noted that the list of expenditure does not include an obligation to contribute to the costs incurred in operating the lift in the building. Although paragraph 5 of Part II of the First Schedule to the lease grants the lessee the right, in common with other lessees to use any service or passenger lifts in the building, the parties were agreed that there is no obligation on the Whites to contribute to the costs of servicing, operating and maintaining the lift. No evidence was presented to us as to how this situation came about. We infer that either it was expressly negotiated at the time of the grant of the lease on the footing that the Whites' flat is located on the ground floor, or it has come about as a consequence of an error or omission. Whatever the reason the parties were agreed on this point so that when the annual expenditure is ascertained to be shared out amongst the lessees, there are two schedules prepared, Schedule 1 dealing with general building expenditure and Schedule 2 dealing with expenditure concerned with the lift only.

20. The parties were agreed that historically service charge accounts have been drawn for the year 25 December to 24 December in each year in accordance with the lease. The parties were also agreed that the amount of the two on account instalments is driven not by a budget but by the actual expenditure in the previous year.

21. Whilst not an uncommon regime it does give rise to the potential for practical difficulties particularly for a landlord which is not a commercial organisation with financial reserves, such as a company controlled by lessees following a collective enfranchisement or a RTM company exercising the right to manage. For example the service charge year starts on 25 December. The first on account instalment is not payable until the following 25 March so that for the first quarter the company must fund the services from its own funds; it will not have been entitled to collect in any on account instalments. Further if by 25 March the accounts for the previous year have not been prepared and the expenditure has not been ascertained and certified, there will be no on account instalment due and payable on that date. The same situation will arise if the accounts have still not been prepared and the expenditure ascertained and certified by 29 September. The company providing the services thus may not be able to demand on account instalments at all. Of course at year end when the accounts have been prepared and the expenditure ascertained and certified the amount of the contribution will be payable in full on demand.

22. Another practical consequence of the regime set out in the lease is that if in one year the actual expenditure is modest, the amount of the on account instalments for the following year will be similarly modest. The converse is true. If in one year major works are carried out and the actual expenditure substantial the on account instalments for the following year (if demanded) will be similarly substantial.

23. In these circumstances it is expected that the landlord will manage the strategy for the reserve fund with great care and seek to avoid undue fluctuations as mentioned in clause 2(2)(a)(vii) of the lease.

The service charge accounts

24. Before moving on and by way of general background and to help set the scene we set out some brief observations about the service charge accounts which have been provided to us.

	2010	**2011**	**2012**
Schedule 1			
General	£72,763	£56,382	£57,334
Management fee	£14,805	£14,386	£15,640
Contribution to reserves	£21,872	£464,855	£80,706
Major works	£-	£443,763	£73,577
Sub total	**£109,440**	**£979,386**	**£227,257**
Less contribution from reserves	£ 17,808	£443,763	£50,706
Net expenditure	**£91,632**	**£535,623**	**£176,551**
Schedule 2			
Expenditure	**£4,744**	**£7,790**	**£3,948**

The issues

25. The issues before us as set out in Mr Dutton's opening skeleton argument were:

    25.1 If service charges are due, who is entitled to sue the Whites for them?
    25.2 Has effective notice been given under section 48 Landlord and Tenant Act 1987?
    25.3 The contractual obligations under the covenant

25.4 What service charge contribution could properly have been certified?
25.5 The percentage service charge contribution payable by the Whites
25.6 Specific items of expenditure challenged
25.7 Alleged failure to draw on the reserve fund
25.8 The effect of section 20B of the Act
25.9 The obligations to make payments on account of the service charge contribution.

26. We shall deal with all of those points, but not necessarily in that order. First it may be sensible to deal with the question whether service charges are due and who is entitled to sue to recover them. Then we propose to deal with the issues concerning the proper construction of the lease. We propose then to deal with specific items of service charge which are in challenge for one reason or another. After that we shall deal with the effect of section 20B of the Act.

If service charges are due, who is entitled to sue the Whites for them?

27. There is an issue between the parties as to whether the person entitled to enforce the covenant obliging the Whites to pay their service charges is R1, as the Whites contend, or R2 as R2 contends.

28. It was common ground that the Whites' lease was granted in 1977 and thus is an 'old' lease for the purposes of the Landlord and Tenant (Covenants) Act 1995 (the 1995 Act). Mr Dutton submitted that the rules identify the persons bound by (and entitled to the benefit) of tenant covenants are those which pre-date the 1995 Act, namely:

28.1 The rules which govern the benefit/burden of covenants following an **assignment the lease** – governed by the rule in *Spencer's Case* [1583] 5 Co Rep 16a; and

28.2 The rules which govern the benefit/burden of covenants following an **assignment of the reversion** - governed by sections 141 and 142 Law of Property Act 1925 (LPA 1925) which Mr Dutton said were (subject to relatively minor modifications) are re-enactment of provisions in the Grantees of Reversions Act 1540.

There has not been an assignment of the lease. There have been several assignments of the reversion. The assignments with which we are concerned are first the acquisition of the freehold interest by R2 in 2008 and then the grant of the overriding lease by R2 to R1 in 2009.

29. Material provisions of LPA 1925 are:

"141 Rent and benefit of lessee's covenants to run with the reversion

(1) *Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incidental to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.*

"142 Obligation of lessor's covenants to run with reversion

(1) *The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and so far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate ... "*

30. Mr Dutton submitted that the effect of those provisions was that the tenant's covenant referable to the subject matter of the lease goes with the landlord's interest. The covenant to pay the service charge contribution thus goes to R1 upon the grant of the overriding lease because that amounted to a disposal of the reversionary estate and R1 thereby became the Whites immediate landlord.

31. Mr Dutton also submitted that but for clause 8 in the overriding lease [718] the effect of section 141 was to divest R2 of the right to sue on the lease to recover the service charge contribution, and to vest that right in R1.

32. The question arose as to the effect of clause 8. Mr Dutton submitted that clause 8 did not affect the general law and that clause 8 purported to 'de-annexe' a covenant which by statute 'annexed and incident to' the immediate reversion.

33. Mr Dutton relied upon *Re:King* [1963] Ch 459 and two passages:

Upjohn LJ at p488:

"The benefit of that covenant to build, therefore, passed; as it had been broken the right to sue also passed as part of the covenant and, incidentally, also the right to re-enter, if it had not been waived. I protest against the argument that because a right to sue is itself a chose in action it, therefore, has become severed from, and independent of, the parent covenant; on the contrary it remains part of it. The right to sue on breach is merely one of a bundle of rights that are contained in the concept 'benefit of every covenant'."

Diplock LJ at p497:

"Looked at purely as a matter of the meaning of the words used in section 141 [LPA], I take the view that the effect of this section is that after the assignment of the reversion to a lease, the assignee alone is entitled to sue the tenant for breaches of covenant contained in the lease whether such breaches occurred before or after the date if the assignment of the reversion."

Mr Dutton also relied upon *Kataria v Safeland Plc* [1998] 1 EGLR 39.

33. Mr Murch took a contrary view. He submitted to us that notwithstanding the effect of section 141 LPA 1925, which was a statutory assignment of the right to receive the service charge contribution, there was nothing to prevent a re-assignment of that right. Mr Murch gave, by way of an example that the right to receive rent is

usually regarded as an incidence of the reversion, but that the benefit of the right to receive rent can be assigned. To support his submission he relied upon paragraph 1662 *Hill and Redman* which states:

"It is possible for the lessor to assign the right to receive the rent without assigning the reversion. In such a case the assignment operates as the assignment of a chose in action. For the assignee to recover the rent from the tenant in his own name, notice of the assignment must be given to the tenant. ... An assignee of the rents alone can sue for the sums due but cannot recover it by distress except in the name of the landlord..."

Mr Murch also relied upon *Rhodes and anor v Allied Dunbar Pension Services Limited and ors* [1989] 1 WLR 800, in particular a passage at p6 in which Nichols LJ said:

"No mention is made of assignees of the rent payable by under-tenants, even though in law there can be an assignment of the right to recover rent simpliciter: see for example, Knill v Prowse [1884] 33 WR 163."

Mr Murch also drew attention to a passage by Upjohn LJ in *Re:King* where at p488 he said, in respect of a covenant to build and the remedy of specific performance:

"That is one of the rights which passed to him when the benefit of that covenant passed. The assignor has by the operation of section 141 assigned his right to the benefit of covenant and so has lost his remedy against the lessee. Of course, the assignor and assignee can always agree that the benefit of the covenant shall not pass, in which case the assignor can still sue, if necessary, in the name of the assignee."

34. Mr Murch also found support in section 136 LPA 1925 which, he submitted, perfects an equitable assignment and makes it a legal assignment so that the assignee can enforce it in his own name.

35. Mr Murch referred to the notice of assignment at [588] – see paragraph 16 above. He accepted that it was not worded as elegantly as it might have been, but submitted it passed the reasonable recipient test. He said this amounts to an effective notice of assignment because the recipient would appreciate there has been an assignment and would understand the assignment. He said that in any event, even if it were to be held defective, it was open to R2 to give notice of assignment now and the right to sue in its name would arise and that would cure any defect.

36. In this case we are not strictly concerned with a right to sue for the service charge contribution. On this issue we prefer the submissions of Mr Murch. We find that although section 141 had the effect of a statutory assignment of the right to receive the rents and other sums payable under the lease the benefit of those rights are capable of a further assignment. As Upjohn LJ made clear, the parties can agree that the benefit of the covenant shall not pass. We find a re-assignment back of the right is perfectly possible. Of course such assignment operates in equity only unless and until a valid notice of assignment is given to the tenant.

Construction of the lease issues

37. During the course of the hearing a couple of construction of the lease issues arose.

The percentage contribution payable

38. The first was the percentage service charge contribution payable by the Whites. The lease provides a formula. That formula is the proportion of the rateable value (RV) that the subject flat bears to the total of the RVs of the flats in the building including the subject flat as at the commencement of the term, namely 26 December 1971. The parties were agreed that as a matter of arithmetic the proportion at that date was 3.85%.

39. Mr Dutton submitted that since the grant of the lease every time there was a physical change in the building which affected the RV of a flat, it was necessary to re-work the figures. Mr Dutton also submitted that the parties were not bound by the RV that might appear on a rating list issued by a district valuer but that the actual RV of each flat at the material time needed to be established and put into the formula. Mr Dutton rejected the notion that the percentage established by operating the formula as at 26 December 1971 remained the same throughout the term because if that was what was intended the parties would simply have made the calculation, established the percentage and inserted that figure.

40. Mr Murch submitted that once the formula produced a percentage that percentage was fixed in stone for the duration of the lease, subject only to any variation which might be made pursuant to Part IV Landlord and Tenant Act 1987 (LTA 1987). Mr Murch also submitted that reference in the lease to RVs was a reference to the RVs on the rating list maintained by the district valuer as at December 1971.

41. Mr Murch accepted that since the rating list had been prepared in 1971 there had been some changes in the layout of some flats and some sub-division had taken place.

42. No evidence was presented to us as to how the agreed percentage of 3.85% had actually been arrived at. At [61] there is a schedule of all flats which sets out the percentages for Schedule 1 which total 100% and for Schedule 2 which also totals 100% but with the landlord picking up 5.89%. We infer that these percentages have been adopted by R2 and by predecessors in title for some years.

43. No evidence was presented to us as to what physical changes had occurred to flats over the years since the grant of the lease in 1977. It appears that some modifications have taken place, such that some flats now have balconies and roof terraces and some flats have been sub-divided. No evidence was presented to us by the Whites as to what percentage should be adopted in place of 3.85%.

44. Mr Dutton accepted that on his submission every time there was a physical change to a flat that might affect its RV there should be a re-assessment of the RV of every flat in the building and a recalculation carried out. Further given that he submitted the RVs were not to be taken from the rating list it means that an expert valuer would be required to value each flat every time. In the event of any disputes about any valuation a means to resolve that dispute would be required. The lease makes no provision for any such dispute resolution. Mr Dutton also accepted that if his construction were to be preferred it would mean implying the words 'from time to time' at the end of line five of clause 2(2)(a) of the lease

45. Drawing on our accumulated experience and expertise in these matters we reject the submission made by Mr Dutton. What he suggests would result in a very costly and complex valuation exercise to be carried out every time that a physical change to a flat results in a change to the RV of that flat. Such an exercise would be so unwieldy, unworkable and uncommercial.

46. We accept Mr Dutton's point that if the formula was to produce a fixed percentage then it would have been easier to simply insert that percentage figure into the lease instead of the formula. But in our experience it is not uncommon for formula's to be inserted into leases instead of fixed percentages.

47. As the parties were agreed that the RVs as at December 1971 produced a percentage of 3.85%, we find that on the true construction of the lease that is the percentage contribution payable by the Whites. We are reinforced in this conclusion because it appears that that percentage has been adopted by successive landlords and the Whites since 1977 and does not appear to have been challenged by the Whites until now.

The reserve fund

48. One of the arguments made by the Whites is that the reserve fund has been mismanaged, we shall deal with that point later. Mr Murch submitted that the Whites were in arrears of service charges, had not contributed to the reserve fund and thus it was not open to them to complain about the manner in which the reserve fund had been managed. His point turned on the proper construction of the lease as regards the reserve fund.

49. Mr Murch acknowledged that his point was a linguistic one. The provisions as regards the reserve fund are:

> *"(vii) such sums as the Lessor shall reasonably consider necessary from time to time to put to reserve to meet the future liability of carrying out major works to the Building or the demised premises with the object as far as possible of ensuring that* ***the contribution*** *shall not fluctuate substantially in amount from time to time"* (emphasis added).

Mr Murch acknowledged that the service charges, including the reserve fund are held subject to the statutory trust arising under section 42 of the Landlord and Tenant Act 1987 (LTA 1987). Mr Murch submitted that the Whites cannot escape the terms of their lease and that the purpose of the reserve fund is to ensure that 'the contribution' shall not fluctuate substantially'. He said reference to 'the contribution' can only be a reference to the White's contribution. In circumstances where they have not contributed, therefore to that reserve fund, there is nothing to which recourse can be had to ensure that there is no fluctuation.

50. Mr Dutton submitted that whether the White's were in arrears or not was irrelevant. He submitted that if R2 had allocated sums to the reserve fund in any one year the Whites contribution to the total expenditure becomes payable and that will include the contribution to the reserve fund allocation. Mr Dutton submitted that there was only one reserve fund to which all lessees contribute and in which all lessees have an interest. He said that if Mr Murch's submission were accepted the practical effect would that there would be 35 different reserve funds; one for each lessee.

51. As a matter of construction of the lease we prefer and adopt Mr Dutton's submissions, which are helpfully summarised in his note on closing submissions. We assume that in respect of each year in question R2 will have transferred to the reserve fund the amount so allocated and

is able to recoup itself either from the instalments of contribution paid on account, or if there are arrears from the contributions when actually paid. It is purely an accounting matter but either way each lessee will contribute to the reserve fund and be entitled to a share of it.

Certification

52. The lease requires that the amount of the contribution is to be ascertained and certified by 'the Lessor's Managing Agents'. It was not in dispute that the White's immediate landlord is R1. It was also not in dispute that R1 had not provided any services and, so far as we are aware, does not have any managing agents. The question then arises as to who is to ascertain and certificate the contribution.

53. Mr Dutton submitted that the certificate serves two functions. The first is to set out the total expenditure which has been incurred in the year in question – the headline figure. The second is to calculate the actual amount payable by reference to the percentage payable – the bottom line figure. Mr Dutton submitted that this is the bare minimum of information to be included in the certificate. Mr Dutton submitted that the White's immediate landlord has not issued any certificates and such documentation as R2 has issued does not contain the material information.

54. Our attention was drawn to accounts issued as follows:

2010 [62] There is an undated audit report to lessees at [64] given by Lachman Livingstone, registered auditors. There is a summary of detailed expenditure at [66] which shows net expenditure for Schedule 1 of £91,632.35 and for Schedule 2 £4,744.95. At [68] there is a document prepared by Pembertons headed 'Adjustment Schedule for the Year Ended 24th December 2010. This schedule lists all of the flats and the percentages of contributions attributed to them (and also the landlord in the case of Schedule 2 expenditure). Mr Dutton observed that this schedule was prepared by but not certified by Pembertons, indeed it was not certified by anyone.
For ease of reference the material information on the Adjustment Schedules, as regards flat 4, for the years 2010, 2011 and 2012 is set out on Appendix 1 to this Decision.

2011 [56] There is a balance sheet at [57]. It may be noted that it bears a Note:

"The bank balance of £198,266.90 comprises of £193,190.18 of service charge account balance and £5,076.72 of reserve fund account balance. The reserves per the balance sheet stand at £111,969.96. The difference between the reserves balance per the balance sheet and the bank balance will be made good when the service charge reserve debtors stated in the balance sheet have paid."

There is a report to the landlord at [58] again signed off by Lachman Livinstone, now described as chartered accountants and registered auditors. It is dated 2 November 2012. A detailed list of expenditure is at [59]. Pembertons' Adjustment Schedule for the year is at [61].

It was not in dispute that these accounts were not given to the Whites until 19 November 2012.

2012 [42] There is a an 'Accountant's report of factual findings to the Managing Agent' at [43]. It is dated 24 June 2013 and again is given by Lachman Livingstone. A detailed schedule of expenditure is at [44] and a balance sheet is at [45]. A Note on the balance sheet reads:

"The reserves per the balance sheet stand at £142,470.28. The difference between the reserves balance per the balance sheet and the bank balance will be made good when the service charge reserve debtors stated in the balance sheet have paid."

Pembertons' Adjustment Schedule is at [47].

55. Mr Murch accepted a certificate was required. The accounts were prepared by accountants instructed on behalf of R2 and upon receipt they were accepted and adopted by Pembertons. Pembertons prepared the Adjustment Schedule having accepted and adopted the accounts. Mr Murch went on to submit that, by way of example for 2010, the total costs were ascertained by reference to the detail set out in [66] and the amount and the balancing debit/credit is set out in the Adjustment Schedule at [68]. Thus, by these two documents Pembertons have ascertained and certified the amount of the contribution to be paid by the Whites.

56. Mr Murch also accepted that the certified amounts for each year drive the amount of the on account instalments for the following year and if those certificates have not been issued by 25 March and/or 29 September the on account instalments due on those dates do not fall to be payable. Mr Murch also accepted that here Pembertons have issued ad hoc demands to the Whites for payments on account. He also accepted that these were not payable by the Whites because, amongst other things they were not compliant with section 47 LTA 1987. He further accepted that the budget prepared for 2013 does not drive or inform the amount of the on account instalments due for that year.

57. We accept and prefer the submissions of Mr Murch on this point. Both the lease and the overriding lease oblige R2, as the lessor, to provide the services. For the purposes of clause 2(2)(b) of the lease the lessor is R2 and it follows that it is R2's managing agent that is to ascertain and certify and certify the amount of the contribution.

58. It would have been tidier if Pembertons had issued a document headed along the lines: 'Certificate for the purposes of clause 2(2)(b) of the lease' and then set out the total of the detailed expenditure incurred for

the year followed by a calculation of 3.85% thereof showing how the amount of the contribution had been arrived at.

59. Although the accounts as drawn by Lachman Livingstone contain more detail than is strictly required for the purposes of the lease, they are more akin to corporate accounts, they do contain the material information. In adopting those accounts and preparing the Adjustment Schedule and by demanding (or crediting) the balances shown thereon Pembertons have, in practical effect, certified the amount of the contribution payable.

Heads of expenditure

60. Before leaving the lease there is one more aspect of construction we have to deal with. As will be seen shortly part of the White's case is that items of expenditure have been included in the expenditure incurred which are not within the heads of (permitted) expenditure set out in the lease. Obvious and typical examples include directors and officers insurance costs, late filing fees, bank charges, accountancy and audit fees.

61. In general terms Mr Murch contended for a broad interpretation of the lease, particularly the sweep-up provisions in clause 2(2)(a)(vi) being " *the cost of all other services which the Lessor may at its absolute discretion provide or install in the Building for the comfort and convenience of the lessee"* and on implied terms.

In support of his submission Mr Murch cited *Marks and Spencer Plc v BNP Paribas Securities Services Trust Company (Jersey) Limited & anor* [2013] EWHC 1279 (Ch) and drew our attention to several passages from the judgment.

Mr Murch acknowledged that *Marks and Spencer* concerned a lease of commercial premises and that in residential leases the courts have tended to adopt a stricter approach.

Mr Murch argued that any expenditure which relates to the building can be recovered by the sweep-up clause. Also implied terms can apply to expenditure which in 1977 the parties might have contemplated the landlord might incur.

62. Mr Dutton urged us to take the stricter approach. Mr Dutton cited to us passages from *Woodfall: Landlord and Tenant,* in particular paragraphs 7.163 to 7.174.

63. In due course we shall have to deal with each disputed head of expenditure separately but our general approach will be to follow and prefer the submissions of Mr Dutton on this point. He rightly reminded us that there is no presumption that a landlord can recoup all expenditure incurred and that the obligation on the tenant to contribute to expenditure must be clear and unambiguous, and that as regards

sweeper clauses in residential leases the courts have tended to take a restrictive view.

Statutory points

64. Before moving on it may be helpful deal with two statutory points taken by Mr Dutton.

Section 48 Landlord and Tenant Act 1987

65. Mr Dutton submitted that R1 as the White's landlord had not served a notice pursuant to section 48 LTA1987 and that in consequence any service charge otherwise due from the tenant to the landlord shall be treated for all purposes as not being due at any time before the landlord does comply with the section.

66. Mr Murch submitted that the combination of two letters [580 and 582] sent to the Whites in 2011 when, read together, gave the required information.

67. The argument went back and forth but both Mr Dutton and Mr Murch were in agreement that any defect could be cured by giving a fresh compliant notice. One might have expected that such a notice would have been given during the course of the hearing in order to 'kill' the point once and for all. It was not. However, post the hearing the tribunal has received a letter from the White's solicitors dated 10 April 2014 which encloses a notice dated 11 March 2014 served on the White's by R1. Evidently R2 has informed the White's solicitors that the March 2014 notice is a valid notice that rectifies any previous issues submitted by the Whites and was served without prejudice to R2's previous submissions made during the course of the proceedings.

68. The Whites have not challenged the validity of the March 2014 notice. In these circumstances the rival arguments about whether the letters at [580 and 582] amount to a valid notice or not are otiose. We decline to incur public resources on a redundant issue. We simply observe that we are unlikely to have found that the letters at [580 and 582] amount to a valid notice. A formal notice given to lay persons must be tolerably clear so as to be informative to them. It is not appropriate to cherry pick isolated passages from two or more documents and to say that all the required information is there, the more so when incorrect and misleading information was given to the Whites in 2008 by R1 and later in 2008 by Farleys Management on behalf of R2.

Section 20B of the Act

69. Section 20B of the Act is in these terms:

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.

70. R2 contends that two notices have been given to the Whites, in respect of each of the years 2010 and 2011 which comply with section 20B(2) so as to preserve the right of R2 to collect in the service charges for those years. The letters are dated 23 June 2011 [592], 22 June 2012 [1310A] Each of the letters is in broadly the same form as follows:

"Dear [ ]
36 Buckingham Gate

Under current legislation we are required to advise owners where we may not be making a service charge demand within 18 months of the expenditure being incurred.

In accordance with S.20b(2) of the Landlord and Tenant Act 1985 we therefore, give notice that costs have been incurred which you may subsequently be required, under the terms of your Lease, to contribute to by the payment of a Service Charge.

Please find attached Summary of Expenditure report showing total costs expended, all of which are subject to confirmation. These costs may be changed once any queries are determined.

The Summary of Expenditure report is for information only and is subject to change when the accounts are finalised.

The accounts for the above property will be sent to you as soon as possible.

Yours sincerely

Pembertons Property Management
Client Accounts Department"

71. Attached to the letters was a draft Detailed Expenditure Account in much the same format as the final version actually included in the year end accounts we have already mentioned.

72. Mrs White accepts she received the letter for 2010 but denies receipt of the letter for 2011. Ms Carlon in her evidence described to us the usual office routine for outgoing mail. She explained that once the letters were

printed off and signed they were placed in window envelopes, would be taken the mail room and franked first class before being collected by Royal Mail. Although Ms Carlon had no reason to believe the usual office routine was not followed on this occasion equally she was not in a position to say positively that it had.

73. Mrs White impressed us as being a methodical and careful lady with a good grasp of the service charge issues arising at 36 Buckingham Gate and with documents neatly filed. During the course of giving her oral evidence Mrs White made several references to her own files of papers to check a point of detail. We do not hesitate to accept her evidence on this point. We are reinforced in this conclusion because we note in the printing of the letter at [1310A] after the address line 'London' there is a gap of several lines before the post code is printed. Given that window envelopes were used by Pembertons it may be that the envelope sent out did not have the post code visibly shown and this may help explain why it was not delivered.

74. Thus, we find, as a fact, that a section 20B(2) notice was given for 2010 but one was not given for 2011.

75. Mr Dutton submitted that in any event the notice(s) that were given were not effective for the purposes of section 20B(2). His point was that a valid section 20B(2) notice must give the exact expenditure said to have been incurred, it was not sufficient to simply give a draft schedule of expenditure and state that the draft may be subject to change. Also in this context Mr Dutton submitted that the 18 month period ran from the date when the expense was incurred. He observed that in relation to electricity that would be the day on which the energy was consumed because the obligation to pay for it occurred on that day. Mr Dutton accepted that it may not be practical to calculate consumption of electricity on a daily basis.

76. Mr Murch submitted that the notice(s) were valid and that Mr Dutton's approach expected too much. Further if the exact amount of expenditure was known at the time of the giving the notice a demand for the actual sum would be made instead thus rendering section 20B(2) pointless. Mr Murch also drew to our attention the Court of Appeal decision in *OM Property Management Limited v Burr* [2013] EWCA Civ 479 in which the Master of the Rolls upheld the decision of the Upper Tribunal (Lands Chamber) that for the purposes of section 20B of the Act 'costs' are 'incurred' on the presentation of an invoice or on payment; but whether a particular cost is incurred on the presentation of an invoice or on payment may depend upon the facts of the particular case.

77. We find that the section 20B(2) notice given in respect of 2010 was a valid notice. It put the Whites on notice that the draft schedule of expenditure totalled £111,313 before a transfer from reserves of £17,808 so that the net expenditure was £93,504. In fact the actual expenditure

for 2010 was slightly less at £109,440, before a transfer from reserves of £17,808, so that the actual net expenditure was £91,632 – see [66].

78. We conclude that this is what section 20B was designed to achieve – lessees given notice of a likely expenditure so that they can be ready to deal with the service charge account when it actually arrives and are not taken by surprise by a demand for an unexpected amount. Of course, if the actual expenditure had exceeded the amount of the draft account in the section 20B notice the outcome might be different but that was not the case here.

The particular service charges in dispute – preliminary points and approach

79. Having set the scene and determined a number of rival positions on the correct approach to take we can now turn to the items of actual expenditure claimed to have been incurred and which are in dispute.

80. The starting point is 2010. R2 commenced court proceedings against the Whites, claim no. 1CL 10221. The Whites made a counterclaim. The claim and the counterclaim were compromised and the proceedings were stayed pursuant to the terms of an order made by consent. An undated copy of the order is at [585]. The schedule to the order records that one of the terms of settlement was that the Whites was to make a net payment to R2 in the sum of £14,000 by way of four equal instalments.

81. It was submitted to us that by reason of the order the parties had agreed as at March 2010 the service charge arrears stood at £14,000. That cannot be right. We have seen neither the claim nor the counterclaim. We have not seen an agreed cash account as between the parties at that date. We do not know when the proceedings were issued or what sums were claimed. For example if the proceedings were issued in 2009 we assume the claim would not have included any balancing debit for the year ended 24 December 2009. Similarly, as at the date of settlement, assuming it was March 2010, the parties would not have known what service charges had been incurred between 25 December 2009 and the date in March 2010 when the settlement was reached and what proportion thereof was payable by the Whites.

82. A further complication is a credit of £3,406.92 claimed by the Whites. Evidently in LVT proceedings between the Whites and the previous freeholder were agreed in favour of the Whites pursuant to which the Whites' account was to be credited with £3,406.92 plus a sum to be agreed in 2010 in relation to external decorations which had been carried out. It has been assumed that these sums were taken into account in a service charge reconciliation which would have taken place at the completion of the purchase of the freehold by R2. Pages [568/9 refer]. The Whites assert that these sums have not been credited to their cash account. Ms Carlon told us that she was aware that the Whites had been successful in proceedings and she was instructed by Mr Horsfall to pay money from the service charge account. It is not clear to us whether

or not this was done, and if it was whether it was a proper use of service charge funds. How this was dealt with in accounting terms was not explained to us and remains an issue outstanding for the cash account.

83. Given the range of issues between the parties and the permutation of possible results and outcomes, at the hearing the parties were not able to set out their rival positions as to what sums, if any, were actually payable by the Whites to R2 in respect of service charges.

84. In agreement with the parties the Tribunal said that it would make such determinations on most, if not all, of the issues which had been raised before it. The outcomes would then need to be translated into debits/credits on a cash account as between the parties.

85. We thus propose to go through the disputed service charge expenditure for the years 2010, 2011 and 2012 and make as many determinations as we can. Having done that the parties must then try and agree a cash account between them as at 24 December 2012. We hope and trust they will make every effort to do so. If they cannot do so one of the parties may make an application for the cash account to be determined, in accordance with the directions set out towards the end of this decision.

86. We have not taken into account any sums in respect of 2013. During the course of the hearing it was agreed that the sums payable on account for 2013 were driven by the certified accounts for 2012. So far as we are aware no compliant demands for on account payments on 25 March and 29 September 2013 were served on the Whites and thus no such on account payments fell due and payable by them. Further as the amount of the on account payments is driven by the certified expenditure for the previous year and not by the budget prepared by Pembertons for the year 2013 there is no practical point in this Tribunal considering the question whether that budget showed a fair and reasonable amount to be paid on account.

87. On this aspect of the proceedings we had a joint written witness statement made by the Whites [548]. We heard oral evidence from Mrs White who was cross-examined. Mr White was offered for cross-examination but Mr Murch said that was not required as he would only put the same questions to Mr White which he had put to Mrs White.

88. We also had a written witness statement from Ms Simone Carlon of Pembertons [673]. A second witness statement is at [1313]. Ms Carlon was cross-examined on her written evidence.

The items in dispute

The Lift - Cost of electricity

89. It was established at an early stage that none of the engineering insurance costs were associated with the lift. This left the cost of electricity consumed by the lift, a subject on which a disproportionate amount of time was spent. From the outset there was acceptance by R2 that the Whites were not obliged to contribute to costs of and associated

with the lift. None of the accounts from the supplier had been apportioned to strip out the costs of energy consumed by the lift. R2 and its advisers had been aware of the need to do this for a good while but had failed to address the point.

90. In her evidence Mrs White suggested that between 50 and 70% of the total electricity bills were attributable to the lift but did not have any structured calculation to support that figure. A schedule of the electricity bills is at [815]. It was established and agreed that there are four electricity meters which supply the development. Mrs White had made some enquiry of the supplier, EDF, to try and ascertain which meter served the lift but to no avail.

91. The issue of apportionment was not addressed by Ms Carlon in her first witness statement. In oral evidence Ms Carlon first told us that it was not possible to identify which meter served the lift. Evidently Ms Carlon had made some enquiry and was informed this was the position. It was suggested to her in cross-examination that if each meter was isolated in turn and then the lift button then pressed, if it failed to operate it may reasonably be assumed that was the meter serving the lift. Ms Carlon was adamant and said that the lift engineer had told her it was not possible to identify which meter served the lift. Ms Carlon also suggested that even if the meter serving the lift could be identified that meter might also power other fittings, perhaps some lighting or general use sockets so that identifying the meter was not particularly helpful.

92. Ms Carlon accepted that in the accounts up to and including December 2012 all of the costs of electricity had been charged to the Schedule 1 account and that this was wrong and it should have been charged to the Schedule 2 account.

93. In oral evidence on 4 February 2014 Ms Carlon said that R2 would concede that 20% of the electricity costs should be apportioned to Schedule 2 as representing energy consumed by the use of the lift. Ms Carlon said this had been arrived at by an assessment of how many times the lift was used in any one day. Ms Carlon was unable to tell us how many times that was nor was she able to tell us the energy cost of each run.

92. At the hearing on 12 March 2014 Mr Murch made an application to put in Ms Carlon's second witness statement, at [1313]. Mr Dutton did not object to the application and he cross-examined Ms Carlon on her second witness statement. The upshot of this evidence was that having, at last, taken advice from a competent electrician, Aviss which Pembertons had used previously to to carry out investigative work in other similar blocks, it has proved possible to identify which meters serve the lift and to make a reasonably meaningful attempt to identify the energy costs associated with the lift. Ms Carlon did her best to assist us with the calculations which had been prepared by others and to try and explain them. Ms Carlon was unable to explain how it was the figure for 2012 was out of line with the figures for the prior years. R2

was criticised by Mr Dutton for not calling witness(es) with first-hand and direct knowledge of the issues rather than relying on the third party evidence of Ms Carlon. We think that a little harsh and disproportionate.

94. Doing the best we can with the imperfect evidence before us we accept the calculations made in the further evidence of Ms Carlon. We find that they are based on an inspection carried out by a competent electrician with some experience of problem solving supply issues associated with lifts. The subsequent analysis of the energy bills is a reasonably based methodology to ascertain the costs of consumption associated with the lifts which is to be preferred to the rival figures submitted by the parties at the earlier hearing which had no real foundation.

95. Accordingly, we find that of the total expenditure claimed to be payable by the Whites for each of the years set out below a credit should be allowed to them by way of adjustment to the costs of electricity:

Year	**Credit**
2010	£ 52.58
2011	£ 70.35
2012	£102.20

If a balancing debit is to be applied to the Whites account for the year ended 24 December 2009 a credit of £63.64 should be applied.

Bank charges

96. These were claimed for one year only, 2010 in the sum of £48.00. The White's share at 3.85%, if payable, amount to £1.85. It is verging on an abuse of process for a party to expect an expert tribunal to spend much, if any, time adjudicating on such a sum.

97. Ms Carlon was unable to explain to us how and why the sum had been incurred because she was not responsible for day to day management in 2010.

98. We find that the Whites had failed to discharge the opening onus on them to put this item in challenge so that the burden shifted to R2.

99. We find that the sum of £48.00 was properly included in the 2010 schedule of total expenditure and that it was reasonably incurred and is reasonable in amount. We make this finding because the parties, in 1977, when the lease was granted would have been aware that the building was complex to run and that there were provisions for reserve funds to be held in a bank and that bank charges were quite likely to be incurred. We find that the expenditure falls and sits easily as a banking service within clause 2(2)(a)(vi) of the lease.

Careline costs

100. This is a service provided by Careline UK (Monitoring) Limited, which, as we understand it is a company associated with the Peverel Group.

A sample invoice of £63.00 for the 6 months January to June 2011 is at [1191]

101. Evidently this is an emergency alert system that a person might operate in the event of a medical need. Such systems are often to be found in accommodation for elderly or vulnerable persons and can be activated by a button on a pendant worn around the neck or by a pull cord often located at floor level within a flat.

102. Mrs White told us in her evidence that the development is not an elderly persons home and that such a service, if needed by any lessee, should be privately sourced along with any other services a lessee may choose to buy-in.

103. Ms Carlon was unable to tell us when, in what flats and in what circumstances the Careline service had been supplied. Ms Carlon suggested that as it was a service which some lessees valued, it was supplied.

104. We have rejected Mr Murch' general submission that we should take a broad construction of the heads of expenditure set out in the lease and if there are gaps fill them by way of implication. We reject the submission that this expenditure falls within the sweep-up clause 2(2)(a)(vi) because it is not a service provided for the benefit of the building or the comfort and convenience of the lessees as a group.

105. We can understand that some individual lessees may appreciate the comfort of such a service but it is one they should fund themselves. It seems us that an analogous example is a telephone land line, a broad band connection or a similar telecoms service which individual lessees can buy-in if and when they wish to do so.

Corporate costs

106. The members of R2 are those lessees who have invested in the acquisition of the building through the collective enfranchisement. The members of R2 fall into two quite separate and distinct groups. One group is the group of members. The other is the (larger) group of lessees.

107. The total expenditure to be certified for the purpose of the service charge account is that plainly and unambiguously provided for in paragraph 2(2)(a) of the lease.

108. It is to be expected that in addition to the cost of providing the services listed in paragraph 2(2)(a) of the lease R2 will incur other expenditure in managing its affairs and supervising its investments. Examples will include the cost of preparing and filing its annual corporate accounts and annual returns at the Companies Registration Office (CRO), the cost of meetings of members to transact its corporate business, and other costs associated with the running of the company which may

include any fees or expenses paid or reimbursed to directors. In her oral evidence Ms Carlon accepted that some corporate expenditure had wrongly been included in the Schedule 1 service charge expenditure. Ms Carlon said she did not know why that had been done. We observe that such a situation reflects badly on both the managing agents supervising and authorising expenditure from the service charge accounts and on the auditors who signed off the accounts. Such basic errors ought to have been picked up along the way by someone.

109. The Whites have challenged a number of costs which they submit are corporate costs and not Schedule 1 service charge expenditure. The challenge includes the costs of:

Directors' and officers' insurance (DOI);

2010	£44.30
2011	£-
2012	£204.96

Hire of halls for meetings of members;

2010	£-
2011	£133.00
2012	£60.00

Filing fees:

2010	£-
2011	£14.00
2012	£15.00

Professional fees:

2010	£135.13	prep statutory accounts
2011	£144.00	prep trust account return
	£200.00	company secretarial services
2012	£474.00	Surveying fee
	£150.00	CRO late filing fee
	£1.00	CRO fee
	£425.00	claims handling fee
	£2,909.52	tenant debt flat 10
	£126.00	prep trust account tax return

DOI

110. Mr Murch submitted that the DOI insurance was reasonably incurred because it gave comfort to lessees that if the directors were negligent in their handling of R2's corporate business they may have recourse to a claim on the policy. He also submitted that the expense fell within clause 2(2)(a)(vi).

111. We reject that submission. The lease makes it clear that the cost of insurance is dealt with in clause 2(2)(a)(i) and is limited to insurance of

the building against certain risks and perils. There is no reference to DOI. The function of the directors is to manage the investment on behalf of the members. If they were to be negligent in doing so members may have a claim against them but it is difficult to see on what basis a lessee may have a claim against a director personally which may be covered by the policy.

112. We recognise that some management or other companies set up with the express intention of holding a property of which all of the members hold a lease of a flat within the development and with the company holding no other investments and with no other source of income will sometimes provide that certain corporate expenditure is to be included within the service charge regime. However that is not the case here. Not all of the lessees are members of or investors in R2. It is inevitable that when a requisite majority of qualifying tenants choose to exercise the right to a collective enfranchisement they must recognise that not all lessees will participate and to the extent that certain corporate expenses cannot be passed through the service charge account they will have to make other provision to fund the corporate expenses.

113. When the subject lease was granted in 1977 we infer that the landlord, Firmcourse Limited, was a commercial landlord holding an investment on behalf of its members. We cannot see that the parties envisaged the lessees would contribute to the corporate costs of holding the investment.

Hall hire

114. The evidence of Ms Carlon was that a hall was hired to conduct two meetings. One meeting was for all lessees to attend if they wished and to discuss matters of general interest to lessees. The other was for a meeting limited to the members of R2 to enable them to transact corporate business. Ms Carlon accepted that the whole of the cost of hire was charged to the service charge account. No effort was taken to apportion the costs incurred. Ms Carlon accepted that at the very least the cost should have been apportioned. Further, Pembertons were not able to provide any invoices to support the alleged expenditure.

115. The lease does not oblige the landlord to convene annual or general meetings of lessees.

116. Evidently R2 chose to convene meetings of its members and having done so decided to tack on a meeting of lessees. We find that it was not reasonable to attribute any of the cost of the hire of halls to the service charge account. Such costs were not reasonably incurred and the Whites are not obliged to contribute to them.

Filing (and late filing) fees

117. These are plainly and exclusively corporate costs and, for the reasons set out above the Whites are not obliged to contribute to them.

Professional fees

118. We have identified in paragraph 109 a number of professional fees which it is convenient to deal with under this general heading.

119. We find that the cost of preparation of statutory accounts and company secretarial services are plainly corporate costs and not Schedule 1 service charge expenditure costs and that the Whites are not obliged to contribute to them.

120. We also find that the cost of preparation of the trust tax returns are corporate costs. There was no evidence before us as to why these returns had been prepared.

121. Evidently the claims handling fee represents a fee for services rendered to an individual lessee to assist him or her process a claim on the block building insurance policy. We find that the cost does not fall within Schedule 1 service charge expenditure. It is a matter for R2 as to whether or not it assists lessees process insurance claims, but if it chooses to do so, it should so from its own funds and not from the service charge.

122. We were told that the surveying fee related to a licence granted to a lessee. It did not represent any service incurred by R2 in the management of the building. We were told that the practice was to debit such fees to the service charge account and then to credit them back when they were paid by the lessee concerned. Two points arise from this. First it is plainly a wrong use of service charge funds which are held by Pembertons on behalf of R2 on a trust basis. The funds must only be used for the purposes for which they were received. The trust funds ought not to be used by R2 as part of its banking arrangements. Secondly the inherent risk that the lessee concerned might not pay the fees and thus no credit back to the service charge would occur. Again this is very poor and wrong accounting practice which ought not to have arisen and which auditors ought to have picked up. We find that the Whites are not obliged to contribute to this cost.

123. Ms Carlon told us that the tenant debt for flat 10 of £2,909.52 arose due to a write off of service charges payable by the lessee of flat 10. Evidently the write-off arose as a result of an earlier LVT decision. Such a write-off is plainly not a Schedule 1 service charge expenditure. It is not a cost incurred in running the building mentioned in clause 2(2)(a) of the lease.

124. If R2 was required to reimburse a lessee with service charges which have been overpaid by the tenant R2 can only properly do so using its own funds. It simply cannot debit the expense to a subsequent service charge year. Yet a further example of poor accounting practice which ought not to have occurred in the first place and which ought to have been picked up by the auditors. The Whites are not obliged to contribute to this cost.

Major works

125. 2010 £17,808
2011 £443,763
2012 £73,577

It is clear from the accounts that major works had been carried out in each of the years in question. In her evidence Mrs White had a general query as to the nature and scope of those works and whether there had been any duplication. Ms Carlon gave oral evidence on this issue and from which it emerged that there had not been duplication.

Reserve fund

126. One of the complaints made by the Whites was that the reserve fund should have been properly managed to even out expenditure year on year *"... with the object to as far as possible of ensuring that the contribution shall not fluctuate substantially in amount from time to time"*

127. The accounts show movements to/from the reserve fund as follows:

Year	Transferred to reserves	Transferred from reserves	Reserve Fund Balance
2010	£21,872	£17,808	£89,616
2011	£464,855	£443,763	£111,969
2012	£80,706	£60,706	£142,470

128. Although the management of the reserve fund had been in challenge from the outset, no evidence was put in by or on behalf of R2 to show what the strategy had been over the years in question and how the decision making process had been arrived at.

129. Clearly there has been movements to/from the reserve fund in each year and the balance is being built up slowly. Further very expensive works were carried out in 2011 but we do not know whether the final cost was greater or lesser than had been anticipated and thus what effect that may have had on the strategy.

130. In the experience of the members it is usually good estate management practice to have a 5 or 10 year plan or strategy showing by way, of a spreadsheet, movements in and out over the period and the resulting balances.

131. The evidence of the Whites was that the stewardship of the building by the previous freeholders, Continental Property Ventures and Forval was very poor. Such poor stewardship may well have prompted the qualifying tenants to exercise the right to collective enfranchisement so that the building might be run properly.

132. R2 completed its purchase of the freehold in late August 2008. No evidence was put before us as to the knowledge and experience of the

directors of R2. The building is plainly a complex period building. We infer that there had been years of poor management of the building and we infer that there would have been a backlog of issues for the directors to investigate, take advice on and get to grips with. We also infer that R2 will not at the outset have had substantial capital reserves of its own and the series of major works to be carried out over the ensuing years would need to be prioritised and funded as they went along. Thus we can readily understand that for the early years two competing processes were taking place, funding major works to deal with a backlog of issues and, at the same time trying to build up a reserve fund to be drawn down in future years.

133. It is unfortunate that no evidence was presented to us by R2 as to reserve fund strategy. Experienced managing agents ought to have been able to assist their client with a strategy and to help explain it.

134. The issue with the use of the reserve fund is compounded by the fact that it has been utilised to fund day to day expenditure. It is not clear to us how Pembertons and the auditors have allowed this to happen. For example in 2011 the balance of the reserve fund stood at £111, 969. Of that only £5,078 was in the bank. The remainder was represented by service charge arrears payable by lessees. Pembertons had thus drawn on the reserve fund to pay for day to day expenditure.

135. However, we have to deal with the issue as best we can with the evidence before us. Given the issues R2 would undoubtedly have had to manage upon acquisition of the freehold we have no doubt that there was no quick fix and that a programme of major works over a period of years was a reasonable course to take. Funding works at the same time as building up a reserve fund was always going to be difficult in the short term until such time as an evening out could occur. The fund is being built up gradually and the credit balances in the fund year on year are not out of the ordinary for a building of the type and age as the subject building. In 2012 the net difference between funds transferred in and those drawn down was £20,000. There was no evidence before us that this was an unreasonable sum for the directors of R2 to decide upon.

136. On the evidence before us we cannot conclude that R2 was in breach of covenant by failing to draw down from the reserve fund greater sums that it actually did each year.

137. Going forward we would urge R2 and its advisers to ensure that the reserve fund is ringed fenced and that sums are only drawn down from it in conformity with the strategy which the directors have decided upon and published to all lessees.

Caretaking and cleaning

138. The costs claimed are as follows:

	Caretaker	Cleaning

2010	£11,764	£2,674
2011	£18,874	£1,845
2012	£24,198	£130

138. In general terms Mrs White took issue with these costs. Ms Carlon said in her oral evidence that originally the caretaker was John Tilbury, who was elderly and undertook a limited range of duties, including some cleaning. His sickness absences were high and contract cleaners were brought in to provide additional cleaning. This led to an increase in costs overall. Sometime during 2011 a new cleaner, Robert Ottoilono, was engaged. He was much younger than John and was able to undertake a wider role and range of duties to the benefit of the service charge account.

139. We accepted Ms Carlon's evidence on this point and thus we have decided not to make any adjustments to the cost of these items.

Buildings insurance

140. The cost of insurance (based on the accruals method) was as follows:

2010	£14,635
2011	£14,041
2012	£14,583

141. Initially there may have been a misunderstanding about payment of a commission to R2 or to Pembertons or the Peverel Group.

142. The evidence which was eventually teased out was that the insurance was placed by brokers, Kingborough Insurance Services, which is a member of the Peverel Group. Each year prior to renewal Kingbrough goes to the market to seek quotes and reports back to R2. Examples are at [1287 -1289]. In each year in question the insurance was placed with Aviva. In accordance with industry practice the insurer pays a commission to the broker. We were told that for the years in question the percentage commission was:

2010	18%
2011	17%
2012	16%

Ms Carlon was clear in her evidence that the insurer does not pay a commission to R2 or to any other part of the Peverel Group, and that Kingbrough does not share the commission which it receives. We accept that evidence which was not challenged.

143. In his final submissions Mr Dutton did not assert that these rates of commission were out of the ordinary but said that the reducing level of commission being paid suggested that an overpayment might have occurred in the prior years. We reject that submission. There was no evidence before us that if in 2010 Aviva had paid a commission of 16% the gross premium charged would have been reduced proportionately.

We rather doubt that would have occurred. Instead Aviva would have received a higher net premium.

144. The Whites did not adduce any evidence that the levels of premium were unreasonable in amount or disproportionate for the building given it claims record.

145. The experience of the members of the tribunal in matters concerning buildings insurance is that the levels of commission paid by Aviva to Kingborough are within the range one would expect, possibly lower because commission is often paid at the rate of 20%+.
Further, the market is extremely fickle with insurers often adopting different positions from time to time for no apparent reason.

146. In broad terms the contribution payable by the Whites at 3.85% of the premiums is in the order of £560 per year. This not at all out of line will the sum the members of the tribunal would expect for a 2 bedroom flat in central London in a block such as the subject block.

147. For these reasons we decline to make any adjustments to the cost of buildings insurance.

General repairs

148. The totals claimed were as follows:

2010	£16,837
2011	£12,739
2012	£7,469

They comprise a large number of relatively small items.
In their witness statement the Whites take issue with a number of individual items. These have been helpfully summarised by Mr Murch at page xiii of the Schedule – Submissions on Reasonableness appended to his opening skeleton argument. When giving her oral evidence Ms Carlon conceded a number of them.

For ease of reference we set out in Appendix 2 to this Decision a schedule of the contested items annotated with our decisions on them.

149. The items noted as having been conceded were conceded for a variety of reasons, principally duplication or works carried out in and to particular flats, the cost of which was down to the lessee(s) concerned.

150. Several of the items challenged related to reports of drain blockages within individual flats. The evidence of Ms Carlon was that upon receipt of such a report a contractor was called out to trace and investigate. Evidently the drainage arrangements at the building are dated, complex and challenging. In many cases the cause of a blockage was found to be within the communal parts of the system even though the consequence of the blockage might only manifest itself within a particular flat if the blockage caused a back up into the installations within that flat.

151. We find that it was reasonable and in accordance with good estate management practice that such initial call outs to trace and investigate are undertaken by contractors instructed by R2. Where the fault is within the communal system the cost of the call out and subsequent remedial or repair costs fall plainly within Schedule 1 service charge expenditure. Where the fault is found to be within the installations within a particular flat, the remedial costs should be borne by the lessee of that flat.

152. Of the items on Appendix 2 which were not conceded by R2 and which we have found the Whites are not obliged to contribute to our reasons are as follows:

[1153] Cost £740.00. The invoice plainly refers to redecorations within flat 8. Ms Carlon was not able to offer any convincing explanation as to why this cost was charged to the service charge account. We find that the cost was not reasonably incurred.

[1179] Cost £2,900.00. The invoice plainly refers to redecorations repairs to a ceiling within flat 19A. Ms Carlon explained that an exterior part of the building had not been kept in repair and as a consequence water had penetrated into flat 19A and damaged the ceiling. R2 accepted responsibility to bear the cost of remedial works. We accept the evidence of Ms Carlon on this point. We reject the submission that the cost of remedial works thereby becomes an item of Schedule 1 service charge expenditure. R2 is obliged to keep the exterior of the building in repair. In breach of covenant it failed to do so. The owner of flat 19A has a claim in damages against R2 for that breach. R2 dealt with that claim by effecting repairs to flat 19A. We find that the cost should be borne by R2 from its corporate funds. We find there is nothing within clause 2(2)(a) of the lease which brings this type of expenditure within Schedule 1 service charge expenditure. Of course the external repairs to the building to prevent a recurrence would properly fall within Schedule 1 but not the consequential cost of internal works to a flat to put right the result of a breach of covenant.

[1205] Cost £3,668.35. This related to damp proof works carried out within flat 14. It was not in dispute that the works fell within Schedule 1 expenditure. The evidence was to the effect that it was originally proposed to carry out the works in 2008 and the expenditure was debited to the 2008 service charge account. However, for some reason the works were not carried out and, we infer, the contractor was not paid. The works were carried out in 2011. But incorrectly the expense was debited to the service charge account again. In effect the service charge account has been double charged. The sum having been included in the 2008 service charge account, but not expended should have been put aside until such time as it was required. We find that the sum

debited to the service charge account in 2011 was not reasonably incurred and the Whites are not obliged to contribute to it.

Flat 9 Repairs £8,907.60 [1091]

153. Before moving on it is convenient to deal with this item which came up in the course of the hearing. Included with the batch of invoices supporting the major works costs in 2011 at [1091] is an invoice relating to the repairs to a ceiling and redecoration works carried out within flat 9 in March 2011. The invoice refers to two quotations but neither of them was provided to us.

154. In evidence Ms Carlon said that the repairs/redecorations were required as a result of a water leak but she did not know the cause of the leak. Also, Ms Carlon said that the damage had been the subject of an insurance claim. The sum incurred £8,907.60 had been reimbursed by the insurers, less the excess of £1,500 which had been paid by the lessee of flat 20A. Ms Carlon accepted the sum of £1,500 should be credited to the service charge account. The Whites' share of this at 3.85% = £57.75

Management fees

155. These were claimed as follows:

2010	£14,085	3.85% = £542.28
2011	£14,386	3.85% = £553.86
2012	£15,540	3.85% = £598.29

156. The first issue was the terms of the management agreement and whether that agreement was a qualifying long term agreement within the meaning of section 20 of the Act and the regulations made thereunder.

157. The evidence of Ms Carlon on this matter, which we accept, was that when Forval became the freeholder it decided to appoint Farleys Management to be its managing agent. A bespoke agreement was drawn up. A copy is at [239 – 255] and was signed by both parties.

158. The term of the agreement was defined to be from the *"commencement date* [1 March 2007] *together with any continuous period thereafter through until terminated in accordance with Clause 7.2."*

159. The termination provision in clause 7.2 was that either party was able to terminate on 6 months' notice, or such other period as the parties might agree. Ms Carlon was not aware of any other period having been agreed. Clause 7.1 also made provision for termination in the event of insolvency or breach of a material obligation.

160. The remuneration to be paid to Farleys was £310 + VAT per unit for the basic services. There was a schedule of rates and fees in the event that additional services were commissioned. Clause 6 provided that the fees were to be reviewed annually by Farleys at the time of setting the budget

and any change was to be notified to the client in writing as soon as reasonably practicable.

161. The services to be provided are set out in clause 3. They are broadly in standard commercial form. It may be noted that clause 3.1.6 requires accounts to be kept and submitted and the obligation to have the accounts prepared and certified by a qualified accountant and circulated to lessees with a certificate of service charge expenditure.

162. Ms Carlon told us that the business of Farleys was taken into the Peverel Group and put into Pembertons which was a new company. Pembertons continued to manage the building and simply took over from Farleys and continued with the same agreement.

163. When R2 acquired the freehold interest they continued with Pembertons and so far as Ms Carlon was aware on the same general terms and conditions as the original agreement between Forval and Farleys.

164. Ms Carlon told us that she has monthly meetings with the board of R2. She is involved in the budget setting meetings which are usually held each September. The re-appointment of Pembertons is discussed and fees are also discussed. Ms Carlon said she was aware that the board have considered appointing other managing agents and she has, from time to time agreed a lower fee than she originally proposed.

165. In cross-examination Ms Carlon accepted that there was no written management agreement between R2 and Pembertons and that the RICS Code of Practice approved by the Secretary of State recommended that there should be a written agreement.

166. Ms Carlon told us that she was a member of IRPM, with 22 years' experience in residential property management. She was currently employed as a Head of Operations. Over the years she has held a number of posts as her career has developed. In the early days Ms Carlon had day to day responsibility for the subject building, but then moved on to other duties. During 2011 Ms Carlon took on executive responsibility for the building. Ms Carlon explained that below her there are a number of regional property managers who report to her and over the years there have been a number of property managers responsible for the subject building.

167. Ms Carlon explained that one of her roles was to supervise expenditure allocated to the service charge accounts. Invoices are submitted to her from the purchase ledger department. She can either accept them, query them or reject them. The level of information and detail available to Ms Carlon when she considered each invoice submitted to her was not clear to us.

168. We find that the document at [239] forms the basis of the agreement as between R2 and Pembertons. Both parties have acted on the terms of it

in a broad way. Whether or not the agreement could, as a matter of law, be assigned by either of Forval or Farleys, the fact is that both Pembertons and R2 have adopted and acted upon the terms of the agreement as if it were an agreement between them.

169. We find that the agreement is not a qualifying long term agreement within the meaning of section 20 of the Act and the regulations. We make this finding because the agreement was not an agreement that was entered into for a term of more than twelve months. The fact that Farleys/Pembertons may have been in post as the managing agent for a number of years does not mean that they have been in post subject to the terms of a qualifying long term agreement.

170. The subject agreement was capable of being terminated within six months of the commencement date, with no fault or reason having to be given. The parties anticipated that there would be an annual review of fees. Plainly if a consensus could not be reached on fees one or other party was free to terminate the agreement. We are satisfied that regular discussions have taken place over the re-appointment of Pembertons and it would appear that Pembertons have been re-appointed annually

171. Another issue was the quantum of the management charge and whether it was reasonable in amount.

172. There is no hard and fast basic unit fee for management. Each building is different and the level and complexity of management properly required will vary widely. For ease of reference and broad comparison we have set out in paragraph 155 the amount of the unit fee attributable to flat 4 on the basis of a 3.85% contribution.

173. We find that the subject building is a difficult and complex building to manage, and doubtless at times a time consuming one. The unit fee attributable to flat 4 of £540 - £600 (in round figures) over the years in issue is, in our experience, at the higher end of the bracket that can be considered reasonable for a building such as 36 Buckingham Gate where the management service provided is first rate.

174. However, we find that the quality of the management service delivered by Pembertons over the years in question has been far from first rate. Earlier in this lengthy decision we have identified a number of shortcomings, some, perhaps many of which are of a serious nature. There are too many to summarise here but we particularly draw attention to numerous sums quite incorrectly debited to the service charge account.

175. We therefore find that the quantum of the management fees claimed for the level of service delivered is not reasonable in amount. An adjustment is appropriate. There can be no precise mathematical calculation which can be adopted to identify the amount of the adjustment. Inevitably a broad brush approach has to be taken. We find that a discount of 20% of the fees claimed should be made in each of the

three years we are dealing with to reflect the poor service level and evidence of failings in a number of respects.

Accountancy fees

176. These have been claimed as follows:

2010	£1,846
2011	£1,540
2012	£1,220

177. The Whites put these costs in challenge on the footing that they ought to have been included within the management charge and that it was unreasonable to incur them as a separate charge.

178. We reject that submission because clause 3.1.6 of the management agreement obliges the agent to keep basic accounts and records and to submit them to a qualified accountant to be prepared and certified and for certificates to be prepared for each lessee.

179. We thus find that it was reasonable for the cost to be incurred. We find that the amount of the cost was reasonable for a reasonably well conducted audit and report. However, we have serious reservations about the quality of the work undertaken. The whole point of an independent audit is to act as a check and to give some protection to lessees. Earlier in this Decision we have identified a number of serious shortcomings with the level of service provided. The lessees have not been protected to the level that it is reasonable to expect. We thus find we should make an adjustment to reflect this. Again an arithmetical approach is not appropriate. We find that a 20% discount should be made to the sums claimed, on much the same basis as set out in paragraph 175 above.

The next steps

180. This decision is to be taken as final decision for the purposes of Rules 52-56, in relation to those determinations and findings we have made and identified.

181. As a result of some of the decisions we have made the parties will need to carry out an arithmetical exercise to calculate the amount of the service charges payable by the Whites for each of the years in question and the cash account as between them.

182. We expect the parties to take a responsible and pragmatic approach to the arithmetical exercise and the cash account. However, we recognise that issues or differences may emerge and that if need be the tribunal will have to determine them. We have therefore set out below further directions in case they may be needed.

183. It may also be helpful if we indicate to the parties that in the light of our overall findings in this case we are minded to make an order pursuant to section 20C of the Act and we are minded to require R2 to reimburse

the Whites the fees they have paid to the tribunal in connection with these proceedings. If the parties cannot agree on these matters, either of them may make an application to the tribunal and we shall, of course, give careful consideration to it.

Further directions

184. Either party which wishes to make an application to the tribunal arising out of the settling of a cash account as between the parties, or as to section 20C of the Act or in relation to reimbursement of fees shall do so by **5pm Friday 8 August 2014.**

185. The application shall be served on the opposite party at the same time as it is filed with the tribunal. The application shall be accompanied by a summary of the issue and the rival positions of the parties.

186. The recipient of an application made pursuant to paragraph 184 shall by no later than **5pm Friday 22 August 2014** file with the tribunal and serve on the opposite party a statement of case in answer.

187. Further directions will be given as may be appropriate to any application which may be made, including consideration of determining the application on the papers pursuant to Rule 31.

188. If no applications are made by **5pm Friday 8 August 2014** it will be assumed and deemed that all matters between the parties arising under these proceedings have been determined or agreed such that the tribunal will be functus.

Statutory law

189. Statutory law which we have taken into account in arriving at our decisions is set out in the Schedule below.

Judge John Hewitt
5 June 2014

The Schedule

Statutory Provisions

Landlord and Tenant Act 1985

18.— Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

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.

(2A)-(3) (4) ... [repealed]

(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.

20.- Limitation of service charges: consultation requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

(2) The application shall be made—

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

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

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

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

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

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

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

27A Liability to pay service charges: jurisdiction

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

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal 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 in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Landlord and Tenant Act 1987

47.— Landlord's name and address to be contained in demands for rent etc.

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

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

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

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

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

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

48.— Notification by landlord of address for service of notices.

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any
time before the landlord does comply with that subsection.

(3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

Flat No. 4	Schedule 1 %	Schedule 1 Building Cost	Schedule 2 %	Schedule 2 Lift Cost	Total Cost	Service Charges Levied	Additional Levy Roof Works	Surplus/ Deficit	Add Surplus B/f	Adjustment Invoice/(credit)
2010	3.85	£ 3,527.85	£ -	£ -	£ 3,527.85	£ 3,288.86	£ 457.08	-£ 218.09	-£ 194.23	-£ 412.32
2011	3.85	£ 20,621.51	£ -	£ -	£ 20,621.51	£ 20,335.17	£ -			£ 286.34
2012	3.85	£ 6,797.24	£ -	£ -	£ 6,797.24	£ 5,886.73	£ -			£ 910.51

Date	Page No.	Invoice	Should the Whites	Comments
	[]	Sum	Contribute?	
2010				
28.01	1142	£ 299.63	Yes	Communal blockage/drains
27.06	1153	£ 740.00	No	Redecoration within flat 8
24.07	1158	£ 134.00	Yes	Communal blockage/drains
8.11	1168	£ 235.00	Yes	Communal blockage/drains
12.11	1169	£ 176.25	No	Conceded by R2
22.11	1170	£ 410.00	No	Conceded by R2
12.12	1172	£ 460.00	No	Conceded by R2
14.12	1179	£ 2,900.00	No	Redecoration within flat 19A
2011				
16.02	1194	£ 246.00	Yes	Communal blockage/drains
22.02	1198	£ 240.00	Yes	Communal blockage/drains
1.04	1200	£ 348.00	Yes	Communal blockage/drains
5.04	1205	£ 3,668.35	No	Duplicated debit
26.08	1225	£ 144.00	No	Conceded by R2
12.09	1226	£ 375.00	Yes	Conceded by R2
2012				
10.01	1241	£ 390.00	No	Conceded by R2
17.02	1247	£ 288.00	Yes	Communal blockage/drains
10.08	1262	£ 595.50	Yes	Tracing leak - communal
1.10	1264	£ 84.00	Yes	Communal blockage/drains
2.10	1265	£ 420.00	Yes	Communal blockage/drains
5.10	1267	£ 1,380.00	Yes	Communal blockage/drains
6.10	1269	£ 602.16	Yes	Communal blockage/drains
17.12	1275	£ 390.00	No	Conceded by R2

Date	Page No.	Invoice Sum	Should the Whites Contribute?	Comments
	[]			
2010				
28.01	1142	£ 299.63	Yes	Communal blockage/drains
27.06	1153	£ 740.00	No	Redecoration within flat 8
24.07	1158	£ 134.00	Yes	Communal blockage/drains
8.11	1168	£ 235.00	Yes	Communal blockage/drains
12.11	1169	£ 176.25	No	Conceded by R2
22.11	1170	£ 410.00	No	Conceded by R2
12.12	1172	£ 460.00	No	Conceded by R2
14.12	1179	£ 2,900.00	No	Redecoration within flat 19A
2011				
16.02	1194	£ 246.00	Yes	Communal blockage/drains
22.02	1198	£ 240.00	Yes	Communal blockage/drains
1.04	1200	£ 348.00	Yes	Communal blockage/drains
5.04	1205	£ 3,668.35	No	Duplicated debit
26.08	1225	£ 144.00	No	Conceded by R2
12.09	1226	£ 375.00	Yes	Conceded by R2
2012				
10.01	1241	£ 390.00	No	Conceded by R2
17.02	1247	£ 288.00	Yes	Communal blockage/drains
10.08	1262	£ 595.50	Yes	Tracing leak - communal
1.10	1264	£ 84.00	Yes	Communal blockage/drains
2.10	1265	£ 420.00	Yes	Communal blockage/drains
5.10	1267	£ 1,380.00	Yes	Communal blockage/drains
6.10	1269	£ 602.16	Yes	Communal blockage/drains
17.12	1275	£ 390.00	No	Conceded by R2