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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LSC/2013/0419**
Property	:	**22 Malcolm Court, Malcolm Crescent, London NW4 4PJ**
Applicant	:	**Ms Suzanne Gordon**
Representative	:	**Mr J Malka - Brother**
Respondent	:	**Dr Shabbeer Ahmad Qureshi**
Representative	:	**Dr Qureshi In Person**
Type of Application	:	**Determination of service charges payable – section 27a Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge John Hewitt Chairman** **Mr Hugh Geddes JP RIBA MRTPI** **Ms Sue Wilby**
Date and venue of Hearing	:	**21 November 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**23 December 2013**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:

   1.1 There are no service charges currently outstanding and payable by the Applicant to the Respondent;

   1.2 An order shall be made (and is hereby made) pursuant to section 20C Landlord and Tenant Act 1985 (the Act) to the effect that none of the costs incurred or to be incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant;

   1.3 The Respondent shall by **5pm Friday 24 January 2014** reimburse the Applicant the sum of £350.00 being the amount of fees paid by the Applicant to the Tribunal in connection with these proceedings; and

   1.4 The Respondent shall by **5pm Friday 24 January 2014** pay to the Applicant the sum of £200 by way of costs.

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. By an application dated 7 June 2013 [6] the Applicant (Ms Gordon) made an application to the Leasehold Valuation Tribunal pursuant to section 27A Landlord and Tenant Act 1985 (the Act) for the determination of the amount of service charges payable by her to the Respondent landlord (Dr Qureshi). Ms Gordon also made a related application pursuant to section 20C of the Act in relation to any costs which Dr Qureshi might incur in connection with these proceedings.

4. The service charges claimed by Dr Qureshi are set out in the table marked Appendix 1 attached to this Decision.

5. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.

6. These proceedings are subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules), subject to the Transitional Provisions.

7. A case management conference was held on 1 August 2013. Ms Gordon was represented by her brother, Mr Malka. Dr Qureshi did not attend, evidently because he maintains that he is an intermediate leaseholder

and not Ms Gordon's immediate landlord. We shall explain this submission further shortly. Directions were duly issued [28].

8. The applications came on for hearing before us on 21 November 2013. Ms Gordon attended and was represented by Mr Malka. Dr Qureshi attended and presented his own case. Both Ms Gordon and Dr Qureshi gave evidence. Both were cross-examined and both answered questions put to them by members of the Tribunal.

The Tribunal decided that an inspection of the subject property would not assist them to arrive at their decisions.

The leasehold structure

9. Malcolm Court comprises a development of 24 2 bedroom purpose-built flats laid out in three 2 storey blocks each containing 8 flats.

10. The freehold appears to be vested in The Warden and College of the Souls of All Faithful People Deceased of Oxford.

11. By a lease dated 10 March 1941 Malcolm Court was demised to a Francis Howkins for a term of 99 years from 29 September 1935. That lease is registered at Land Registry with Title Number MX131407. That lease became vested in Plustrade Limited (Plustrade) and subsequently it may have been vested in Mayfields Estate Limited (Mayfields) for a while. On 27 April 2011 Sharon Kemp and Michael French were registered at Land Registry as proprietors of the lease, evidently having paid £90,000 for it on 4 February 2005. Entry 10 in the Schedule of Notices of Leases to which the title is subject makes reference to the lease dated 24 August 2000 referred to in paragraph 13 below.

12. By an underlease dated 6 January 1999 [195] Plustrade demised flat 22 Malcolm Court to Ms Gordon for a term of 99 years (less 10 days) from 29 September 1935. We shall set out the material terms of that lease shortly.

13. By an overriding underlease dated 24 August 2000 [210] Plustrade demised flats 21, 22, 23 and 24 Malcolm Court to Dr Qureshi for a term of 99 years (less 5 days) from 29 September 1935. That lease was registered at Land Registry with Title Number AGL170486 on 11 July 2007 on which date Dr Qureshi was registered as the proprietor [193].

This overriding lease has sometimes been referred to as an 'intermediate lease'. The lease was expressly stated to be granted subject to and with the benefit of the underleases vested as follows:

Flat No.	Title Number	Date of Lease	Original Parties
21	NGL402098	26 June 1981	(1) Yorkbrook Investments Limited (2) Avenue Investments Limited
22	AGL722143	6 January 1991	(1) Plustrade Limited (2) Suzanne Gordon
23	NGL51945	12 September 1967	(1) Yorkbrook Investments Limited (2) Mrs Mary Caras
24	AGL67595	6 January 1999	(1) Plustrade Limited (2) I S Vig & K K Vig

Evidently one of those leases is now vested in Dr Qureshi and he sublets it at a market rent.

Ms Gordon's lease

14. It is dated 6 January 1999. A copy is at [195]. The lease demises the flat for a term of 99 years (less 10 days) from 29 September 1935 at a ground rent of £80 per year and a service charge reserved as being 1/24th of the total cost to the landlord of the expenses outgoings services and matters mentioned in the Second Schedule, the amount so payable to be certified from time to time by the Landlord's surveyor, which sum is to be paid on the quarter day next following the receipt by the tenant of a notice of the certificate mentioned.

15. Clause 2 sets out a number of covenants on the part of the tenant, one of which is to pay the rents reserved at the times and in the manner provided. There is no provision for sums to be in advance or on account of the service charge.

16. Clause 4 of the lease is a covenant on the part of the landlord. The detail was not in dispute. The clause may be summarised as a covenant to keep the inside and outside of Malcolm Court in good repair and condition and decorative order and to insure the Court against loss and damage by fire and such other risks as the landlord sees fit.

17. It was not in dispute that the expenses mentioned in the Second Schedule include the costs incurred in compliance with the covenant in clause 4, rates taxes and outgoings, the cost of keeping in repair, clean and tidy the internal common parts, the garages and exterior walls and fences and maintaining any lawns and flowerbeds and:

> *"4. The expenses of management and of services provided by the landlord for the general benefit of the tenants and occupiers of the Court and all other expenses reasonably incurred by the Landlord in or in connection with or relating to the Court."*

Dr Qureshi's lease

18. It is dated 24 August 2000. A copy is at [210]. The lease recites that the landlord, Plustrade, is registered at Land Registry as proprietor of Title Number MX131407. The lease demises flats 21 – 24 Malcolm Court for a term of 99 years (less 5 days) from 29 September 1935 (subject to and with the benefit of the Flat leases – i.e. those mentioned in paragraph 13 above) at a ground rent of £80 per year and a service charge reserved as

being the amount calculated as provided for in the Second Schedule, such amount being certified by the Landlord's surveyor which sum shall be paid on the quarter day next following the receipt by the tenant of a notice of the certificate mentioned.

19. Clause 2 sets out a number of covenants on the part of the tenant, which include covenants to pay the rents reserved at the times and in the manner provided and to pay on the usual quarter days such sums on account of the service charge rent as the landlord may reasonably specify.

20. Clause 4 sets out covenants on the part of the landlord which include to keep in good repair the main drains, gas and water pipes serving the demised premises and to insure Malcolm Court against loss or damage by fire and such other risks as the landlord thinks fit.

21. The Second Schedule provides that the tenant is to pay by way of a service charge rent a fair proportion attributable to the demised premises of the costs of complying with the covenants set out in clause 4, rates taxes and outgoings, the costs of keeping in repair, clean and tidy the common parts, garages, walls fences, landscaping features, lawns and flowerbeds, expenses of management and the reasonable provision towards a sinking fund for future major expenditure.

22. By letter dated 24 August 2000 prepared by Nicholson Graham & Jones and addressed to Ms Gordon [121] they said:

> *"Dear Miss Gordon*
>
> ***Flat 22 Malcolm Court ...***
>
> *Following my letter of 3 August, I am writing to inform you that my client Plustrade Limited has today granted an overriding lease of Flats 21-24 Malcom Court to:*
>
> *Dr S A Qureshi*
> *64 Somerset Road*
> *Southall*
> *Middlesex UB1 2TS*
>
> *and Dr Qureshi is therefore now your landlord. All payments of rent and service charge (including the payment of £488.81 recently requested from you by Copping Joyce) and other sums due under your lease should be made to Dr Qureshi or as he directs.*
>
> *Yours ..."*

The background to the application

23. Ms Gordon has exercised her right to a new lease pursuant to section 39 Leasehold Reform, Housing and Urban Development Act 1993. That claim is being dealt with by the competent landlord, All Souls College. Dr Qureshi has informed the solicitors acting for the College that there are arrears of ground rent and service charges payable by Ms Gordon. The College will not grant the new lease until such arrears as may be due and payable have been paid or provided for.

24. Hence Ms Gordon has issued this application pursuant to section 27A of the Act so that the amount of any service charges due and payable by her can be determined.

25. This Tribunal has no jurisdiction in respect of the ground rent claimed to be due. It appears there may be issues between the parties as to whether the ground rent has been demanded in compliant form and as to whether some of the arrears claimed may now be statute barred.

The service charges in dispute

26. All of the service charge arrears claimed by Dr Qureshi are in dispute. The sums claimed are set out in the Appendix to this Decision.

Dr Qureshi said that of the expenditure incurred he divided it equally between the four flats, charging 25% to each. The principle of this approach was not disputed by Ms Gordon. Dr Qureshi accepted that he has to bear 25% of the expenditure attributable to the flat of which he is the beneficial owner and which he sublets.

It is convenient to take each category of expenditure on a subject by subject basis and then to consider several overarching issues.

Ground rent payable by Dr Quershi

27. Under the lease vested in Dr Qureshi he is liable to pay a ground rent of £80 per year to his landlord. Evidently Dr Quershi considered that his landlord was Mayfields, a company owned, controlled or run by a Mr B Joshi. Dr Qureshi tends to use the names Mayfields/Joshi interchangeably but in either case he is referring to his landlord.

28. Dr Qureshi claimed that he was entitled to recover the £80 ground paid out by him equally from each of his undertenants, hence his claim to £20. Dr Qureshi accepted that the Second Schedule to the lease vested in Ms Gordon did not make express reference to that rent being a recoverable item of service charge expenditure but he relied in support on a letter dated 5 February 2003 sent to him by Nicholson Graham & Jones [120] who acted for Plustrade in 2000 when Dr Qureshi's lease was granted to him – see [121] paragraph 22 above. The letter of 5 February 2003 stated:

"Dear Dr Qureshi

Flats 21-24 Malcolm Court ...

Thank you for your letter of 17 January, which I received this morning.

I sent you the original of your lease of flats 21-24 with my letter of 24 August 2000, so you should be able to refer to the original for its terms. As explained in my letter of 24 August 2000, you should have applied for the lease to be registered at HM Land Registry, and if you are not able to deal with this yourself you should appoint a firm of solicitors to deal with it for you.

You have to pay £80 per year to your landlord Mayfields Estates Limited. Your four sub-tenants (of which you are one) pay you £20 per year each, which gives you the total of £80 to pay on to Mayfields Estates. You remain liable as one of the sub-tenants to pay £20 ground rent for your own flat.

I hope this is of some assistance. I am not able to help you further in relation to this matter, in view of the long time that has now elapsed since the sale by my client completed.

Yours ..."

Dr Qureshi also argued that if the other tenant's paid their £20 each year Ms Gordon should do so as well.

29. Mr Malka submitted that in the absence of a clear obligation in the lease Ms Gordon was not obliged to contribute to the ground rent payable by Dr Qureshi to his landlord.

30. We have considered the Second Schedule of Ms Gordon's lease carefully and we find there is no express obligation relating to the ground rent payable to the immediate landlord. Paragraph 2 makes a reference to

> *"2. All rates taxes and outgoings (if any) "payable in respect of paths ways and forecourt or in respect of any part or parts of the Court used by the Tenant in common with the tenants owners or occupiers of the other flats in the Court."*

and it occurred to us that a ground rent payable by the landlord might be construed as an 'outgoing' but that paragraph then goes on to limit the obligation to paths, ways and forecourts.

31. We bear in mind that when Ms Gordon's lease was granted there was no intermediate landlord of part of Malcolm Court. We note that when Plustrade granted the intermediate lease to Dr Qureshi it did not impose an obligation on Dr Qureshi to make a contribution to the ground rent which it in turn had to pay to its landlord. We infer that when Plustrade granted the various leases it was content to receive ground rent from its

lessees and to pay its ground rent to its landlord; it did not seek to obtain both from its tenants.

32. Bearing these matters in mind, we prefer the submissions made by Mr. Malka and we find that in each of the years in issue Ms Gordon is not obliged to contribute to the ground rent payable by Dr Qureshi. We did not agree with the observations made by Graham Nicholson & Jones in its letter. We also find that the fact that other tenants of Dr Qureshi may have paid those sums does not impose an obligation on Ms Gordon to do so.

Property insurance

33. In only two of the years in question has Dr Qureshi stated the sum alleged to be payable. In seven of the years Dr Qureshi uses the expression 'TBA' which evidently is short for 'To Be Advised'. In the years 2001, 2004 and 2007 there is no express mention of insurance and it is unclear whether or not it is included in the global sums claimed.

34. Dr Qureshi has not produced any documents to support the claim or to show when and how he incurred the expense. Indeed in evidence he said that for the most part he had not paid the insurance to his landlord.

35. During the course of the hearing and on the question of disclosure Dr Qureshi's attention was drawn to Direction 7 [3] which is a very clear direction that he was to attach to his statement of case copies of all invoices and receipts upon which he wished to rely in support of his claim. At the hearing Dr Qureshi accepted that he has not complied with that direction and said *"Whatever is not in the bundle is not important."*

36. On the evidence before us we were not persuaded that the two sums identified were expended or incurred by Dr Qureshi. Accordingly we find the two sums are not payable. As to the remainder the expression 'TBA' is quite inappropriate for use at a hearing at which the amount of service charges payable are to be determined. No explanation was given by Dr Qureshi as to the reason for the use of that expression, although there was an intimation that he may not yet have paid the insurance contributions to his landlord.

37. We find that if a landlord is not willing to give a clear and accurate account of expenditure alleged to be due then he cannot expect to recover a contribution from his tenants. We thus find that Ms Gordon is not obliged to pay the two sums identified or any sums that may later be identified in respect of the years 2001 to 2012 which are under review in these proceedings.

Electricity

38. Again in only two of the years in question has Dr Qureshi specified a figure which he claims to be due. Again Dr Qureshi has not produced any documents to support the alleged expenditure. For the same

reasons as set out in paragraphs 36 and 37 above we find that Ms Gordon is not obliged to pay the two sums identified or any sums that may later be identified in respect of the years 2001 to 2012 which are under review in these proceedings.

Gardening

39. In most years Dr Qureshi has specified the contribution sought. He has not done so for years 2001 and 2007 although some element of gardening costs might be included in the global sums claimed.

40. Initially in his evidence Dr Qureshi claimed that he had invoices and receipts to support the expenditure. In the course of cross-examination and when pressed as to why he had not disclosed the documents to support his claim Dr Qureshi stated that the gardeners he employed were not the kind to issue invoices and that he had paid them in cash but had not obtained receipts from them.

41. Ms Gordon told us in evidence that that she had lived in her flat from 2000 until October 2006. In the first year some cleaning and gardening was undertaken at Dr Qureshi's behest but not since. Ms Gordon said that in the early years she and a fellow lessee, a Mr Buckle, arranged for the gardening to be carried out and the gardener was paid directly by them on a monthly basis.

    Ms Gordon also said the place is now in an awful state. Ms Gordon said that she had sublet since October 2006 but kept in touch with her tenants and had good relations with them and one of her tenants told that she herself carried out some gardening.

42. We prefer the evidence and submissions of Ms Gordon on this issue, because we find her to be a witness upon whom we can rely with confidence. Given the contradictions in the evidence of Dr Qureshi we have to treat his evidence with some caution and to look for corroboration. We find none. We also find it highly unusual that for each of the years 2008 – 2012 the claim is exactly the same - £170 per year for the first two years and then £180 per year for the reminder. For reasons which we shall explain later we were not persuaded that each of these annual accounts was prepared on the date stated on it; we find the statements of account for the years 2008-2012 were all prepared recently for the purposes of this hearing. For these reasons we were not persuaded that the sums claimed were incurred by Dr Qureshi and hence Ms Gordon is not obliged to pay the contributions claimed of her.

Accountant's fees

43. No express claim is made for the years 2001 and 2007 but it may be the global sums claimed include accountant's fees. In the year 2005 the management fee of £100 might be broken down as to £50 for management and £50 for an accountant. The documents before us suggest that costs of 'management' and 'accountancy' are used interchangeably. Examples are at [137 and 139].

44. No supporting invoices have been submitted by Dr Qureshi. Doing the best we can with the confused and confusing evidence it appears that Dr Qureshi said he had employed an accountant – *"and all the details are in my file"*. However none had been disclosed to Ms Gordon and none had been produced to the Tribunal. Dr Qureshi did not seek an adjournment so that he could go and get the documents.

It was also far from clear to us what work the accountant actually did. None of the annual accounts produced to us were signed off by an accountant. For the most part the schedules Dr Qureshi relies upon were very simple and basic documents issued either on the notepaper of his medical practice of that of a company, Amerine Limited, an investment company owned or controlled by him.

45. Mr Malka submitted that the lease expressly required the annual expenditure to be certified by *"the Landlord's surveyor"* and there was no express reference to accountants or accountancy in the Second Schedule.

46. We find that the sums claimed are not payable by Ms Gordon. We find the sums claimed were not expended and if they have been incurred they were not reasonably incurred. We do so because there is no evidence to support or explain the sums claimed. From the documents before us it appears that Dr Qureshi uses the expression 'accountancy' and 'management' interchangeably and we infer that Dr Qureshi is seeking to recover as 'accountancy' compensation for his own time in preparing such accounts and demands as have been produced. Further, in our view, this is not a case which requires accountancy services and if they were provided it was not reasonable for Dr Qureshi to incur the cost.

Management fees

47. Dr Qureshi told us that at no time did he employ or engage managing agents; he managed the property himself. He said that whilst doing so he had to engage and pay a locum doctor to stand in for him in his medical practice. Thus he claimed to be entitled to recoup the costs.

48. It appears that for the first six years Dr Qureshi put the management fee at £50 per unit and for the last six years he put it at £500 per unit. Dr Qureshi provided limited evidence to support the sums claimed. He said that he charges his time at £200 per hour which is what he is able to achieve for private work in his medical practice. He told us that he visits the property every two months to keep an eye on it, hires the gardeners and cleaners and pays the electricity and the ground rent to the head landlord. He considered the sums claimed were reasonable in amount.

49. Mr Malka challenged Dr Qureshi on the management functions undertaken by him and submitted that Dr Qureshi provided little or no management and did not provide or organise any services.

50. Mr Malka also submitted that the Second Schedule did not, in terms, enable a landlord to charge a fee for his own time.

Paragraph 4 of the Second Schedule is in these terms:

> *"4. The expenses of management and of the services provided by the Landlord for the general benefit of the tenants and occupiers of the Court and all other expenses reasonably incurred by the Landlord in or in connection with or relating to the Court*

Mr Malka submitted that an expense is something which is paid out, a sum of money expended. Paragraph 4 makes reference to 'the expenses of management' and to 'other expenses reasonably incurred'. He said that when a landlord spends his own time on management that does not amount to an expense or an expense incurred. Compensation for such time spent is not a sum incurred or an expense.

Mr Malka also submitted that where it is contemplated that a landlord might undertake self-management the lease usually makes express reference to that and provides a mechanism to impute a cost to be included in the service charge account. There is no such provision in the subject lease.

51. We accept and prefer the submissions of Mr Malka. We were not persuaded that Dr Qureshi actually carried out or provided very much by way of management services. We have found that he did not organise or provide gardening or cleaning services. Despite the service charges in issue spanning 12 years there are no claims at all as to the cost of any repairs or redecorations. We infer none were carried out. Although in evidence Dr Qureshi claimed to have organised some internal common parts redecoration in or about 2007 that was hotly contested by Ms Gordon. In the absence of any express claim to the cost of redecoration and any supporting invoices or receipts we are not prepared to assume that Dr Qureshi did organise those works.

52. Our principal conclusion is that the sums claimed by Dr Qureshi for management are not sums expended or incurred by him and thus under the terms of the lease he is not entitled to recover the sums claimed from Ms Gordon. Again we make the point that even if Dr Qureshi has recovered such sums from other lessees that does not of itself impose an obligation on Ms Gordon.

53. If Dr Qureshi was to be entitled to claim compensation for his time spent as an expense of management, the amount reasonably recoverable would be very limited. We have found that very little active management was in fact undertaken. It seems to us at best that Dr Qureshi may have paid some electricity bills, may have paid his ground rent and sometimes may have paid insurance contributions to his landlord, and, at some point, has prepared annual statements for most of the years in question. The time reasonably spent on such tasks would

be extremely modest. We note by way of an example that each of the annual statements for the years 2008-2012 are virtually in identical format save only for the year. We infer that one was prepared as a precedent or a model and then year was changed. Thus producing five virtually identical statements would not be very time consuming or onerous.

54. Drawing on the accumulated experience and expertise of the members of the Tribunal we find that a reasonable annual unit fee for such management would not exceed £50. The claims to £500 for each of the final six years is grossly overstated and wholly unreasonable in amount.

The litigation costs

55. In the statement for 2004 [66] Dr Qureshi claims a contribution of £734.76 which is said to equate to 25% of £2,939.06 incurred by him.

This sum is made up as follows:

Paid to Mr Joshi by Colin Bishop Solicitors on 26.01.04	£ 947.61
Paid to Mr Joshi as ordered by the court on 12.08.04	£1,338.95
Paid to Colin Bishop Solicitors on 27.08.04	£ 352.50
Paid to locum doctor as Dr Qureshi attended court 12.08.04	£ 300.00
Total	£2,939.06

56. The documents which Dr Qureshi relies upon in support are at [109- 117 and 122- 131]. Evidently over time discarded furniture, unwanted possessions and other debris and fly tipping had accumulated in and around Malcolm Court. Mayfields decided to get in a contractor to clear it away. The contractor's invoice is at [127]. It states that 27 loads were removed at a total cost of £7,498.00. Mayfields apportioned £1,071.10 to Dr Qureshi and sought to recover that from him as a service charge. Dr Qureshi took the view that it was not payable by him and that he ought not pass on that cost to his lessees. He instructed solicitors, Colin Bishop & Co and court proceedings ensued. Dr Qureshi's defence failed and judgment was entered against him on 21 July 2004 in the sum of £1,338.95. That was made up as to the claim + interest £1,138.95 + £200 costs.

57. It appears that Dr Qureshi entered into correspondence with his lessees about the claim and the proceedings (a sample is at [118]) but there was no evidence before us to the effect that Ms Gordon encouraged Dr Qureshi to resist the claim. Ms Gordon was however willing to pay her 25% share of £1,071.10. By letter dated 8 August 2004 [110] Ms Gordon asked Dr Qureshi to confirm she should send a cheque because shortly prior to that Ms Gordon had been sending cheques to Dr Qureshi in payment of insurance and ground rent and Dr Qureshi had been

returning them unpresented. The bundle does not appear to include a reply to the letter of 8 August 2004 but on 1 September 2004 Dr Qureshi sent Ms Gordon the 2004 annual statement, a copy of which is at [66] – see paragraph 55 above.

58. In accordance with general principles we find that Ms Gordon was obliged to contribute 25% of the cost of £1,071.10 being a proportion of the costs of waste and rubbish removal attributed to Dr Qureshi if it had been properly demanded of her. Indeed, Ms Gordon did not contend otherwise. But, we find that Ms Gordon is not obliged to contribute to the costs which Dr Qureshi incurred with Colin Bishop & Co, the costs payable to Mayfields or the costs Dr Qureshi paid to a locum when he attended court on 12 August 2004 because these expenditures are outside the scope of the Second Schedule to the lease vested in Ms Gordon.

The overarching issues

59. Having made finding about specific service charges claimed there are a number of overarching submissions made by Mr Malka which touch on the payability of the sums claimed. We will deal with each of these in turn.

Condition precedent

60. Mr Malka submitted that the reddendum clause in the lease reserves the service charge as a rent which is payable:

> *"... by the Tenant to be certified from time to time by the Landlord's surveyor whose decision shall be final and which sum shall be paid on the quarter day next following the receipt of by the Tenant of a notice certifying the aforesaid amount."*

He said that the issue of such a certificate amounted to a condition precedent both as regards the amount to be paid and when it is to be paid. He said that in the absence of any such certificates no sums were payable.

61. Dr Qureshi accepted that no certificates had been issued by his surveyor and no such certificates had been given to Ms Gordon. His argument was not easy to follow; he made frequent references to the fact that he had an intermediate lease, not a head lease. He said that he was not obliged to follow the requirements set out in Ms Gordon's lease. In seeking clarification of Dr Qureshi's position it appears that he asserts Ms Gordon is obliged to pay to him the sums which the lease obliges her to pay to her landlord, which for this purpose is himself, Dr Qureshi, but he is not obliged to comply with the obligations on the landlord in that lease because he is an intermediate landlord not the head landlord. Dr Qureshi did not appear to appreciate that his reasoning appeared to defy logic. Dr Qureshi also asserted that other of his lessees had paid him and thus Ms Gordon should as well.

62. It is quite clear to us from the documents and evidence before us that Dr Qureshi understands he has the right and the obligation to manage the properties and to provide services and that his lessees, including Ms Gordon are obliged to pay to him what is properly due and payable. Dr Qureshi has asserted his rights on a number of occasions. See for example his letter to Ms Gordon dated 7 October 2003 [119] written in connection with rubbish removal claim asserted by Mayfields in which he says

> *"However, I purchased the rights to manage outside your flat, for which you will be responsible to make payments every year. No service comes free and I would like to know your view before we end up in court."*

63. We are satisfied that by the grant of the intermediate lease Dr Qureshi became the immediate landlord of Ms Gordon. That lease obliges Ms Gordon to make certain payments. That lease obliges the landlord to provide services and gives the landlord the right to recover contributions provided that the landlord complies with the obligations on the landlord as set out in the lease. We observe that in describing the parties to Ms Gordon's lease is says as [196]:

> *"... (hereinafter called 'the Landlord' which expression is intended to include also the person or persons for the time being entitled to include the reversion immediately expectant upon the termination of the term hereby granted where the context so admits)... "*

64. We find that Dr Qureshi as the immediate landlord of Ms Gordon is obliged to perform the obligations of the landlord as set out in the lease and that includes the obligation to provide a surveyor's certificate as a condition precedent of the entitlement to collect the service charge rent.

65. Given that it is not disputed that no such certificates have been issued to Ms Gordon the sums as claimed to date and in issue are not payable by Ms Gordon.

Section 47 Landlord and Tenant Act 1987

66. Mr Malka submitted that whilst some of the early demands bear Dr Qureshi's name and address, the demands for 2007 -2012 are issued by Amerine Limited and do not comply with section 47. That section requires that every demand for rent or other sums payable under the tenancy of a tenancy to which the Act applies shall contain the name and address of the landlord. Subsection (2) provides that if the demand does not contain the specified information any amount of the sum demanded which consists of a service charge 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 to the tenant.

67. Dr Qureshi again relied on his submission that he is intermediate landlord and not the head landlord. He also again asserted that other of his lessees had paid and so Ms Gordon should too.

68. The demands for the years 2007-2012 are at [69-74] are issued by Amerine Limited whose address is said to be 64 Somerset Road, Southall, Middlesex UB1 2TS and they state that *"Please make your cheque payable to Dr S A Qureshi"*. It was not in dispute that 64 Somerset Road is Dr Qureshi's address. However we find that the fact that 64 Somerset Road is Dr Qureshi's address and the fact that the demands required cheques to be drawn payable to Dr Qureshi does not amount to those demands being compliant with section 47. They do not state in clear terms the name and address of the landlord.

69. We therefore accept and prefer Mr Malka's submission that the subject demands are not compliant with section 47 with the consequence that for that reason those sums demanded are to be treated for all purposes as not being payable at any time before the required information is provided the landlord to the tenant by notice.

Summary of Rights and Obligations

70. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations (SI 2007/1257) which came into force on 1 October 2007 provide that a summary of the rights and obligations must accompany a demand for the payment of a service charge. There are detailed provisions for the form and content of such summaries.

71. Section 21B Landlord and Tenant Act 1985 makes provisions with regard to summaries. Subsection (1) reinforces that a demand for the payment of a service charge must be accompanied by a summary of rights and obligations of tenants. Subsection (3) entitles a tenant to withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

72. The evidence of Ms Gordon was that the demands for the years 2007 – 2012 were not sent to her each year and were not provided until these proceedings got underway. She said that none of them were accompanied by a summary of rights and obligations.

73. Dr Qureshi asserted in evidence that the demands had been sent out on a yearly basis but he accepted that they were not accompanied by a summary of rights and obligations. Dr Qureshi again submitted that he was an intermediate landlord and not the head landlord and thus he was not required to comply with section 21B.

74. During the course of the hearing it became clear that by about 2006 Dr Qureshi had become irritated by questions raised by Ms Gordon about service charges demanded of her. He concluded that he would not deal with any more queries and would wait until Ms Gordon sought a lease extension and then he would demand all the historic arrears. Dr

Qureshi was quite clear that this was his strategy. He appears to have concluded that when a new lease was sought he would be in a stronger position to recover sums from Ms Gordon.

75. We note that each of the demands is in identical format and claims identical sums save for the cost of gardening which increased from £170 to £180 for the final three years. We find we have to be cautious in considering the documents generated by Dr Qureshi because a number of them are inconsistent and equivocal. By way of example in his summary at [63] Dr Qureshi listed the alleged arrears. For the year 24 August 2000 to 23 August 2001 Dr Qureshi claimed the total of £390.91. There then followed at [64-74] a batch of supporting annual statements but that for the year 2000/01 was not included. At [187] there is a version of an annual statement for 2000/01 in the amount of £390.91 but at [139] there is also an annual statement for 2000/01 dated 8 October 2002 and it claims only the total sum of £260.91.
As to 2001/2 there is a statements at [64 which claims £338.81. At [137] is another statement for the same year. It is also dated 10 October 2002 but claims the sum of £263.81. Not only are the figures different on the last two statements mentioned, but the letterhead used is also different.

We find on the balance of probabilities that in line with Dr Qureshi's strategy he stopped sending out annual statements to Ms Gordon and decided that he would produce annual statements as and when a new lease was sought.

76. We also find that none of the demands for the years 2007-2012 were accompanied by a summary of rights and obligations. Dr Qureshi was plainly demanding payment of a service charge. Dr Qureshi appeared to be under the impression that because he held an intermediate lease the provisions of the lease vested in Ms Gordon imposing obligations on the landlord did not apply to him and that the various statutory obligations imposed upon those seeking to recover services charges did not apply to him either. We reject both propositions. In consequence and by virtue of section 21B(3) Ms Gordon is entitled to withhold payment of the sums demanded.

Limitation

77. In proceedings before the Tribunal limitation can work in a number of different ways and various limitation periods may apply depending on the circumstances.

78. In these proceedings Ms Gordon seeks a determination as to the amount of service charges payable by her and recoverable from her by Dr Quershi at law. Mr Malka submitted that that brings into question any limitation period which might affect or restrict Dr Qureshi's ability to recover some of the historic service charges if he were to bring legal proceedings in a court.

79. We remind ourselves that the reddendum clause in the lease imposes the obligation on Ms Gordon to pay the service charge. The service

charge is thus reserved as rent. Section 19 Limitation Act 1980 provides that no action shall be brought, or distress made, to recover rent, or damages in respect or arrears of rent, after the expiration of six years from the date on which the arrears accrued.

80. The next question is on which date do arrears accrue due? That must be the date on which a valid demand for the service charge is given to the tenant. We have held that no valid demands have yet been given to Ms Gordon. Thus in that sense no arrears have yet accrued due and no limitation date has yet commenced.

Section 20B Landlord and Tenant Act 1985

81. This brings us to Mr Malka's submissions with regard to section 20B. Mr Malka reminded us that section 20B(1) provides that if any relevant costs were incurred more than 18 months before a demand for payment of a 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.

Subsection (2) provides that if, within the 18 month period, beginning with the date on which the relevant costs in question were incurred, the tenant was notified in writing that the costs has been incurred and that he would subsequently be required to contribute to them by way of a service charge.

82. Mr Malka submitted that in respect of most of the years in question if Dr Qureshi were now to serve a valid and compliant demand for service charges, that is to say a certificate by his surveyor as to the amount due, the sums mentioned in such certificates would have been incurred more than 18 months prior to the date of such demand, and thus by virtue of section 20B those sums were not payable.

83. In support of his submission Mr Malka cited *Brent LBC v Shulem B Association Limited* [2011] 1 WLR 3014 and in particular paragraph 53.

84. In response Dr Qureshi maintained his position that he is only an intermediate landlord and that other lessees have so paid Ms Gordon should too.

85. We accept and prefer the submissions of Mr Malka on this point. However we observe that the year to which his submission might not apply is the year ending 23 August 2012. For that year the 18 month period runs from February 2013 to February 2014 so that any expenditure incurred in the earlier part of the year will be subject to the section 20B limitation but not any expenditure incurred in the latter part of the year. If Dr Qureshi were to seek to serve a complaint demand for sums incurred in the year 2011/12 it would be sensible for him to set out clearly the date on which each item claimed was incurred by him.

General conclusions

86. For the reasons set out above we have concluded that as things stand at present there are no service charges due and payable by Ms Gordon to Dr Qureshi. We were not persuaded that Dr Qureshi was entitled to recover any of the sums alleged to have been incurred by him.

87. In respect of all years to and including 2010/11 Dr Qureshi has no prospect of now serving a compliant demand because all sums incurred in those years will have been incurred more than 18 months prior to the date of such demands. In respect of the year 2011/12 there is a limited opportunity for Dr Qureshi to serve a valid demand in respect of any expenditure which may have been incurred toward the end of that year.

Costs and fees
Section 20 C Landlord and Tenant Act 1985

88. Ms Gordon sought an order that none of the costs incurred or to be incurred by Dr Qureshi in these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by her. Dr Qureshi opposed the application and intimated that he proposed to make a charge of £200 per hour for his time spent on the proceedings.

89. On an application under section 20C it is not necessary for the Tribunal to construe the lease to determine whether it does or does not entitle a landlord to pass through the service charge account the costs of proceedings such as these. What we have to consider is whether if the lease does so provide it is just and equitable to make an order that the landlord may not do so in whole or in part.

90. We have decided to make an order under section 20C in this case because it is just and equitable to do so. The application made by Ms Gordon was meritorious for the most part and she was fully justified in bringing it. Dr Qureshi has failed to establish his entitlement to any of the arrears asserted by him and he has been found wanting in a number of important respects. It would be most unfair that Ms Gordon should have to contribute to any costs which Dr Qureshi may have incurred or may incur in connection with these proceedings.

Costs

91. Mr Malka made an application for costs. It was opposed by Dr Qureshi.

92. These proceedings were commenced prior to 1 July 2013. Thus the costs provisions of Rule 13 does not apply. By virtue of paragraph 3(7) of Schedule 3 to The Transfer of Tribunal Functions Order 2013 (SI 2013 No. 1036), our costs jurisdiction is limited that which prevailed prior to 1 July 2013.

93. For present purposes that jurisdiction is set out in paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. It provides that a sum of not more than £500 may be awarded where, in the opinion of the Tribunal, a party has acted frivolously, vexatiously,

abusively, disruptively or otherwise unreasonably in connection with the proceedings.

94. Mr Malka submitted that Dr Qureshi had provided his statement of case and supporting documents very late and well after the time specified in the directions. Mr Malka and Ms Gordon had sought advice from solicitors on various aspects of presenting the case and had paid for about 6 hours advice at £200 per hour. Advice was sought as to how they might best present their case in the absence of cooperation from Dr Qureshi and the provision of his statement of case and supporting documents in a timely way. Mr Malka submitted that in consequence more costs were incurred than would have been incurred in the ordinary way and if Dr Qureshi had complied with directions. Evidently Dr Qureshi took the view is was not important for him to comply with the directions and supply documents to support his claims to expenditure. Mr Malka submitted that taken overall such conduct amounted to an abuse of process and fell within paragraph 10 under a number of heads.

95. In opposing the application Dr Qureshi submitted that he was not the immediate landlord, only an intermediate landlord and that Ms Gordon had misunderstood the relationship.

96. We accept and prefer the submissions made by Mr Malka. We find that by failing to engage with these proceedings and failing to provide his statement of case and documents in compliance with directions Ms Gordon was put to additional expense. We find that it was reasonable for Ms Gordon to obtain further advice and that a reasonable time for the solicitor to give that advice was about one hour.

97. Thus we have ordered Dr Qureshi to pay costs in the sum of £200.

Reimbursement of fees

98. Ms Gordon has incurred fees of £350 paid by her to the Tribunal. Mr Malka made an application that Dr Qureshi be required to reimburse Ms Gordon. Dr Qureshi opposed the application.

99. The rival submissions were much the same as those summarised above. Mr Malka said that Dr Qureshi was using the new lease application as leverage to collect from Ms Gordon service charges which were wholly unreasonable and in connection with which Dr Qureshi had failed to comply with the contractual and statutory regimes. He said that Ms Gordon was forced to come to the Tribunal and to incur the fees and that it was just and equitable should Dr Qureshi reimburse the fees paid.

100. Dr Qureshi reiterated that his claims were reasonable and that Ms Gordon misunderstood the relationship.

101. We find that it is just and equitable that Dr Queshi should reimburse the fees of £350. Dr Qureshi made it plain to the reversioner that the new lease Ms Gordon sought should not be granted until the arrears of ground rent and service charges he claimed and sought were paid. We

find that the claims to service charges were wholly unsupportable and that none of the sums claimed are payable by Ms Gordon, for several and a variety of reasons. We agree that Ms Gordon was left no alternative but to make her application to the Tribunal and to incur the fees associated with it.

Judge John Hewitt

Year ended 23 August	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Date of Demand		10.10.2002	10.10.2003	01.09.2004	02.09.2005	30.10.2006	01.09.2007	01.09.2008	01.09.2009	01.09.2010	01.09.2011	01.09.2012	
Page No.		64	65	66	67	69	69	70	71	72	73	74	
Item of Expenditure													
*Litigation Costs *				£ 734.76									
Ground rent paid to B Joshi		£ 20.00	£ 20.00		£ 20.00	£ 20.00		£ 20.00	£ 20.00	£ 20.00	£ 20.00	£ 20.00	
Property Insurance paid to B Joshi		£ 63.81	TBA		TBA	£ 137.66		TBA	TBA	TBA	TBA	TBA	
Electricity		TBA	TBA	TBA	£ 17.18	£ 21.30		TBA	TBA	TBA	TBA	TBA	
Gardening		£ 75.00	£ 75.00	£ 22.50	£ 82.50	£ 60.00		£ 170.00	£ 170.00	£ 180.00	£ 180.00	£ 180.00	
Accountant's Fee		£ 50.00	£ 50.00	£ 50.00		£ 50.00							
Management fee		£ 50.00	£ 50.00	£ 50.00	£ 100.00	£ 50.00	£ 926.40	£ 500.00	£ 500.00	£ 500.00	£ 500.00	£ 500.00	
Sub-Total		£ 258.81	£ 195.00	£ 857.26	£ 219.68	£ 338.96	£ 926.40	£ 690.00	£ 690.00	£ 700.00	£ 700.00	£ 700.00	
Ground rent		£ 80.00	£ 80.00	£ 80.00	£ 80.00	£ 80.00	£ -	£ 80.00	£ 80.00	£ 80.00	£ 80.00	£ 80.00	
Total of Demand	390.91	£ 338.81	£ 275.00	£ 937.26	£ 299.68	£ 418.96	£ 926.40	£ 770.00	£ 770.00	£ 780.00	£ 780.00	£ 780.00	£ 7,467.02
* See para [] of Decision													