

9296



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **MAN/00CB/LSC/2012/0178**

**Property** : **112 and 126 East Float Quay, Dock  
Road Birkenhead CH41 1DP**

**Applicant** : **Mrs. Deborah Marriott Webster**

**Representative** : **Mr. Alessandro Demarco**

**Respondent** : **GS Homes UK Ltd**

**Representative** : **Linder Myers Solicitors**

**Type of Application** : **Service Charge determination s27A  
and 19 Landlord and Tenant Act 1985**

**Tribunal Members** : **Mr. John Murray LLB  
Mr. Kenneth Kasambara MRICS**

**Date and  
venue of hearing** : **9 September 2013  
Liverpool & Family Courts**

**Date of Decision** : **9 September 2013**

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**DECISION**

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## ORDER

1. The Tribunal having considered the oral and documentary evidence presented to it determines that the reasonable service charges subject of these applications payable by the Applicant to the Respondent in relation to the respective properties are as follows:-

### 112 East Float Quay Mill 1

Period	Total Expenditure including redecoration and sinking funds	Tribunal's Determination	Proportion X 0.9635%
2011	£160,248	£148,152	£1427.44
2012	£163,151	£147,821.75	£ 1,424.26
2013 (estimate)	£180,413	£162,372	£1,564.45

### 126 East Float Quay Mill 2

Period	Total Expenditure including redecoration and sinking funds	Tribunal's Determination	Proportion X 1.09729%
2010	£0	£0	£0
2011	£80,376.03	£70,839.83	£777.32
2012	£97,646	£92,932.22	£1019.74
2013 (estimate)	£94,220	£94,220	£1033.87

2. The Tribunal determined that pursuant to s20c Landlord and Tenant Act 1985 that 25% of the legal costs incurred by the Respondent in connection with recovery of the service charges (totaling £2091.37) the subject of these proceedings shall not be regarded as relevant costs for the service charge.

## INTRODUCTION

3. On the 12<sup>th</sup> of December 2012 the Applicant, through her lay representative Mr. Alessandro Demarco, made two applications to the Tribunal under s27A Landlord and Tenant Act 1985 to determine liability to pay, and the reasonableness of, service charges in respect of two properties in her ownership at 112 and 126 East Float Quay, Dock Road Birkenhead ("the Properties"). She also sought an order for limitation of costs under s20C of the same Act.
4. In relation to 112 the application was made in relation to the years 2011, 2012 and 2013; in relation to 126, the application was made in relation to the years 2010, 2011, 2012 and 2013. The service charges

for 2010 for Flat 112 had already been considered by a Leasehold Valuation Tribunal on 30 August 2011.

## **THE PROCEEDINGS**

5. Directions were made by a Chairman of the Leasehold Valuation Tribunal on 10 January 2013. On 1 July 2013, the functions of the Leasehold Valuation Tribunal were transferred to the First Tier Tribunal (Property Chamber) by virtue of the Transfer of Tribunal Functions Order 201. By Schedule 3 of that Order the directions made by the Leasehold Valuation Tribunal continue to apply to the present applications.
6. The Respondent was ordered by the Directions to send a statement of case together with supporting documents to the Tribunal and to the Applicant by 1 February 2013 and provision was made for a bundle of documents to be forwarded 21 days before the hearing date.
7. The Respondent did not comply with the directions. There was some delay as the identity of the Respondent had changed from Gregor Shore (UK) Ltd to GS Homes UK Ltd. A separate County Court judgment obtained in relation to the same charges was subsequently set aside by agreement of the Parties before the Tribunal was able to deal with the applications.
8. The Respondent produced a bundle of documents for the Tribunal; the Applicant produced an amount of documents, but not in bundle format.
9. A Tribunal was appointed and an external and internal inspection of the Properties took place on 9 September 2013 at 10am. The Applicant did not attend the inspection. The Respondent was represented at the inspection by Counsel Mr. Asa Tolson, and Managing Agents from Rendall and Rittner, ("the Agents") Mr. Matt Kirk and Mr. Kevin Comer.
10. The substantive hearing of the application was on 9 September 2013 at the Employment Tribunal, Liverpool and Family Courts at 11.30am. At the substantive hearing, the Applicant was represented by her partner Mr. Demarco. The Respondent Company was represented by Mr. Tolson. Evidence was given by Mr. Kirk and Mr. Comer.

## **THE PROPERTY**

11. The Properties are one bedroom flats contained in two 19<sup>th</sup> century Grade II listed warehouses on the docks in Birkenhead. The warehouses were converted in around 2007 into residential flats. 112 is contained in Mill 1, which comprises of 112 flats. 126 is contained in Mill 2, which comprises 66 flats.
12. On inspection, the Tribunal was able to inspect the common parts of the development being the entrance halls, corridors, grounds and car

parking spaces. There are communal entrance halls with door entry system and CCTV coverage and lifts available for the buildings, which is set out on five floors. There are car parking spaces externally, communal bin stores and landscaped areas around and between the blocks.

13. The overall condition of the development, now six years old was reasonably good. On the day of inspection, there was evidence of cleaners on site, and maintenance being carried out to the grounds. There was vegetation growing out of the parapet around both buildings although access could not be afforded to this area to inspect, it being available only externally from the properties themselves.
14. There was no evidence of dog excrement on the day of inspection, but damage could be seen to the internal roof lights inside one of the lifts.

### **THE LEASES**

15. Both flats are held by the Applicant under leases with identical terms for practical purposes. They were originally granted by a Company named Gregor Shore (UK) Limited. That company changed its name to GS Homes UK Ltd on 26 October 2009. Law of Property Act Receivers were appointed on 4 February 2013 under a legal charge held over the Mills; they arranged for the Agents to continue to manage the Mills.
16. Both leases have terms of 150 years; the lease for 112 commenced on 4<sup>th</sup> May 2007 and the lease for 126 commenced on 11<sup>th</sup> June 2008. A yearly ground rent of £250 was initially payable, increasing in line with the RPI on a five yearly basis.
17. The Applicant covenanted in Clause 4 of the leases to observe obligations set out in the Fourth Schedule to the lease. By obligations contained in Part 2 of that Fourth Schedule, the Applicant covenanted to pay the Maintenance Charge and Building Service Charge (as defined in the preamble) which the Respondent incurs in complying with its covenants in relation to the Block and the Estate.
18. Maintenance Costs are attributable to the Gardens and Grounds; Building Service Costs to the Block itself. The Charges the Applicant is obliged to pay are a "fair and proper proportion of the relevant costs to be certified by the Lessor or the managing agent or surveyor appointed to manage the Estate".
19. The amount of the Maintenance Charge and Building Service Charge are to be certified by the Lessee's Managing Agent or Accountant as soon as conveniently possible after the expiry of each Maintenance Year (1<sup>st</sup> January to 31<sup>st</sup> December).

20. The Applicant is obliged to pay on account of those charges on quarter days, or within 21 days of the Respondent's request, subject to later reconciliation for shortfall or excess.

## **THE LEGISLATION**

21. The relevant legislation is contained in sections 19, 27A and s20C Landlord and Tenant Act 1985 which read as follows:

### **s19 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

### **s27A Liability to pay service charges: jurisdiction.**

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 a leasehold valuation 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.

### **s20C 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 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;

(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.

The functions of the Leasehold Valuation Tribunal were transferred to the First Tier Tribunal (Property Chamber) on 1 July 2010 by virtue of the Transfer of Tribunal Functions Order 2010.

## **THE EVIDENCE AND SUBMISSIONS**

### **THE APPLICANT'S CASE**

22. The Applicant's case was effectively set out in a draft defence prepared for the aforementioned County Court proceedings and included in the Respondent's bundle at page 126. Submissions from both parties addressed the assertions set out in that document.
23. The Applicant's case in summary was that:-
- (a) The Respondent had failed to provide a breakdown or details of service charges incurred.
  - (b) There were a number of issues which had led to complaints including:-
    - i. CCTV was broken resulting in excess vandalism and breach of covenant, particularly in relation to the keeping of pets at the development.
    - ii. Broken letter boxes
    - iii. Failure to enforce covenants prohibiting pets which in turn would lead to higher cleaning costs.
    - iv. The Respondent took a month to repair a damaged drainage grill resulting in a flood to her flat.
    - v. Lack of cleaning to common areas and windows; cleaning not to a high standard.
    - vi. Failure to retune or resite the Sky TV dish
    - vii. Excessive and unreasonable electricity charges for common areas.
    - viii. There was no water during parts of 2008/09
    - ix. Landscaping works had not been carried out every year.
    - x. The Lift had been out of action for considerable lengths of time.
    - xi. Provision of fire alarms, smoke detector and emergency lighting costs are questioned
    - xii. The costs of insurance was very high and had risen dramatically

- (c) In relation to a number of the points raised above the Applicant points out that actual expenditure was less than budgeted for and consequently sought a proportionate reduction to reflect that discrepancy.
- (d) No evidence was provided by way of invoices or site inspection reports for any of the expenditure incurred.
- (e) A fellow lessee Mr. Sinton attended the Tribunal and had forwarded an email in support of the Applicant, sharing her concerns over how services had been delivered.

## **THE RESPONDENT'S CASE**

- 24. The Respondent produced Service Charge Accounts for the years 2008 to 2011, and the unaudited financial statement for the year ending 31 December 2012 and Estimated Service Charge for the year ended 31 December 2013 for Mill 1.
- 25. In relation to Mill 2, the Respondent only produced unaudited service charge accounts for 2012 and budgets for 2013.
- 26. No invoices or inspection reports were produced to evidence work carried out.
- 27. Mr. Comer outlined the current services provided by the Agents on behalf of the Respondent. Cleaners were on site Monday to Friday, for 25 hours in Mill 1, and 27.5 hours in Mill 2. They would have their work reviewed by a supervisor on a regular basis. He said that letterboxes were repaired on a regular basis, but it was more economic to wait until a few could be done at once. A survey is to be commissioned in respect of problems with the parapet and the vegetation to ascertain how best to attend to it.
- 28. Mr. Comer stated that a landscaping contractor attends every two weeks and looks after the grounds, carpark and bin sites. They would carry out a general litterpick, trim bushes etc., Trees which had suffered from high winds between the two Mills had to be replaced.
- 29. Mr. Comer confirmed that he visits every Wednesday, inspects the premises and remains on site in the sales office for a number of hours on site to be available to address any issues with lessees.
- 30. In relation to window cleaning, Mr. Comer confirmed that he had no documentation to back up what was only his recollection, but he thought that there had been 2 cleans this year and that there would be another one carried out later on in the year. He was not sure of the exact amount, but felt it was in the "region" of £3,000 per clean.
- 31. He confirmed that the water charges in the accounts were for water used by the cleaners' who had sinks.
- 32. In relation to electricity consumption, Mr. Comer explained that the corridors which have no windows obviously have to have lights on twenty four hours per days. They would consider sensors when funds permitted this but it would be a high capital outlay initially. The Managing Agent uses a resource consultant to get best prices for utility



suppliers. Normal halogen bulbs are used, but the Agent may look to replace in future – again, this was considered currently an unjustifiable capital expense.

33. In relation to Lift maintenance, Mr Comer confirmed that a new contractor had been appointed, and that he had received no recent reports of lifts being out for two or three days at a time. There had been vandalism – and this is not always addressed as lift works are expensive. He said that because of difficulty in collecting serviced charges the Managing Agents had to prioritise matters in terms of risk and health and safety.
34. Mr. Comer said that Management Charges were charged per unit, on a fixed fee of £150 per annum per unit.
35. In response to the complaint about dogs, Mr. Comer said that the Agents had written to residents, and, where there was evidence of dogs being kept in flats, the Respondent had arranged for six tenancies to be determined.
36. In relation to the CCTV cameras, Mr. Comer said that they were “generally working”, but then accepted that a lot of them have been vandalized. This made it difficult to gather evidence about vandalism and dog ownership. He said that they were looking at replacing a number of them with wider angled cameras in due course.
37. Mr Kirk confirmed that the County Court proceedings for recover of service charges were currently stayed pending the outcome of the Tribunal.
38. The Respondent told the Tribunal that the service charge for the Properties were calculated by reference to their floor areas as a percentage of the gross habitable floor area for each block as follows:

Flat	Sq Ft	Mill gross habitable area	Percentage of whole
112	1,054	109,396	0.9635%
126	807	73,548	1.0972

39. In relation to demands for service charges, these were now sent out quarterly, and Mr. Comer believed that they had the required statutory information printed on the back of them; these were not fully reproduced in the bundle. Mr. Demarco was able to show the Tribunal a demand received that morning and it was noted that it did contain the statutory information.
40. Mr. Comer told the Tribunal that until the Agents took over the management of Mill 2 on 1 February 2012, there had previously been no managing agents in place, and the Respondent Freeholder had retained responsibility. When the Agents were appointed they issued the relevant demands for service charges for Mill 2 accompanied by statutory notices. They had very little documentation made available to them for either Mill.

41. Mr. Kirk candidly admitted that there had been an error in the summary of charges sought, in that cleaning charges had been subsequently re-credited following complaints from residents that no cleaning had actually taken place. He also accepted that an invoice dated 3.12.09 for £4,140 ascribed to lift maintenance had been incurred more than eighteen months before the demand, and consequently by virtue of s20b Landlord and Tenant Act 1985 and consequently could not be recovered.
42. The Managing Agent confirmed that a high proportion of flats were unsold, and remained in the ownership of the Respondent. The Tribunal was told that the Respondent was meeting their share of service charges but no evidence was produced to that effect.

### **THE DETERMINATION**

43. The Tribunal considered the evidence and submissions provided by each party, and the documentation, particularly the service charge accounts and demands provided by the Respondent for each Mill.
44. It was quite clear from the evidence of the Applicant and her lay representative, and fellow lessee Mr. Sinton that there have been problems with the management and maintenance of the Mills over time. These problems were particularly acute when former Managing Agents Trinity were responsible for Mill 1, and the Freeholder was responsible for Mill 2.
45. A Leasehold Valuation Tribunal had found damaged light fittings in the lift at inspection in 2011, which were still present at the inspection in 2013, and noted dog excrement in the grounds. Photographs of dog excrement from August of this year were provided by the Applicant, suggesting this was still an issue.
46. Failure to repair the CCTV, which might assist with combatting petty vandalism to the lifts, and letterboxes, and lease contravention (pets), failure to address roof repairs, and resolve parking management at the block were a source of frustration to lessees who provided evidence to the Tribunal. The Applicant conceded through her lay representative that there had been a slight improvement since the current Managing Agents took over.
47. The Tribunal noted that the evidence of petty vandalism (damaged letterboxes, lights in the lift), and vegetation growing from the parapets, detracted from the otherwise overall impression of the Mills being generally in good and clean condition.
48. On inspection the Tribunal saw cleaners on site and at work and maintenance staff working in the grounds. The Applicant suggested that this was done for the benefit of the Tribunal's inspection, and that there had been a flurry of activity during the preceding few days. The evidence of the Respondent was that cleaners are on site for 25 and 27.5 hours per week at the respective Mills. In terms of cleaning, proper provision appeared to be in place, and the Tribunal felt that the current cost of that provision was reasonable.

49. The Tribunal noted that the Applicant was confused in relation to budgets as against actual service charges. The service charges sought in demands were based on actual, not budgeted expenditure; budgeted service charges sought on account were subject to subsequent reconciliation.
50. In the absence of any other evidence provided by either party as to floor areas the Tribunal found the proportion ascribed to each of the Applicant's properties fair and reasonable.
51. Considering the Service Charges for each Mill for the years in question, the Tribunal determined as follows:-

**Mill 1 (Flat 112)**

**2011**

52. The Tribunal found that there had been ongoing problems with the lifts, an issue with the parking control scheme that the former agents Trinity had introduced (and charged for), failure by the Respondent to manage (and indeed contribute to) the problem of pets in properties, and failure to clean, repair and maintain. The Tribunal determined that in the light of this management failure the management charges should be reduced by 25% for the year 2011, resulting in a reduction of £4,872.
53. The accounts showed expenditure of £5,456 for Landscape maintenance for the Year ended 2011 – but there was no invoices or other evidence to show that this work had been carried out. Evidence given by the Applicant was that little had been done to merit this expenditure, which was substantially higher than expenditure for 2010 and 2012. These charges would be reduced by 50%, resulting in a reduction of £2,728.
54. The accounts showed expenditure of £8992 for cleaning for the Year ended 2011 – but there were no invoices or other evidence to show that this work had been carried out, and the cost was not much lower than the present cost for (almost) full time cleaners. Evidence given by the Applicant was that the Mill was not regularly cleaned at this time. These charges would be reduced by 50%, resulting in a reduction of £4,496.
55. The Overall service charge for 2011 of £160,248 should be reduced by £12,096 to £148,152.

**2012**

56. The Tribunal noted that there were unresolved problems with the roof parapet and petty vandalism, problems with the downpipes, and the CCTV system was still not working. The Agent having been engaged for a period exceeding eighteen months the Tribunal was of the view that there ought to have been positive moves to combat these issues. The potential need for consultation would delay any works further.
57. The Tribunal was told by Mr Comer that Management Fees charged by the Agents were on a per unit basis, and that fees were in the region of £150 per annum per unit. The management charges shown in the

accounts of £28,893 would equate to £257.97 per unit, substantially higher than his guesstimate, and higher than shown in the budgets for 2012 and indeed 2013.

58. The Tribunal determined that the figure quoted of £150 per unit by Mr. Comer was a more realistic unit cost for management, and consequently the management charge for Mill 1 should be reduced to £16,800 as a gross amount. In light of the management failings referred to above, that total reduced by 10%, so that a reasonable management charge would be £15120 for the year.
59. Evidence as to how often the windows had been cleaned, and at what cost, was vague, and there was no documentation to support these high charges. Evidence given by the Applicant was that people had cleaned their own windows. There had clearly been some cleaning, but in the absence of evidence to substantiate the cost these charges would be reduced by 25% or £1,556.25.
60. The Overall service charge for 2011 of £163,151 should be reduced by £15329.25 to £147,821.75.

### **2013**

61. The determination in relation to service charges for year ending 2013 of £180,413 relates only to budgeted figures as sought on account. The Tribunal felt that the budgets were unreasonable in the light of previous expenditure and should be reduced by 10% (£18,041) to £162,372.

### **Mill 2 (126)**

#### **2010**

62. No service charge was sought for the year 2010, so the Tribunal found that none were payable

#### **2011**

63. The Agents had produced a "Summary of Expenditure" (p282 of the Respondent's bundle) said to have been incurred by the Developer (Freeholder) between 3.12.09 and 11.10.11. Expenditure was said to have been on lift maintenance, electricity, insurance, cleaning, pest control and repairs. There were no invoices produced. The total expenditure was £80,376.03
64. The Respondent had failed to provide any accounts at all until 2012, in breach of obligations under the lease. No copy demands were produced, only a printed account history (p293 of the Respondent's bundle) showing an amount of £963.80 was sought for services provided from July 2010 to December 2011. This demand would have been made by the Agents, and the Tribunal found that it was likely to have included statutory information.
65. Mr. Kirk accepted that from expenditure of £80,376.03 sought for 2010/11 £4,140 was irrecoverable by virtue of s20b Landlord and Tenant Act 1985; there should have been a credit for cleaning which

was not carried out of £5,396.20. This credit appeared to be over and above the credit for window cleaning mentioned in the account summary which was not mentioned in the summary of expenditure.

66. The Respondent's share of 2011 expenditure of £80,376.03 at 1.09729% ought to have been £881.96. The Account history showed that £963.80 had been debited for this. No further analysis was provided.
67. The Tribunal determined that the expenditure of £80,376.03 should be reduced by £9,536.20 for the irrecoverable lift maintenance charges and re-credited cleaning charges, making a total of £70,839.83.

## 2012

68. Audited income and expenditure accounts were furnished for Mill 2 for the period ended 31 December 2012.
69. Management fees for the block were £12,870 for the year, which, if charges were on a unit basis, would equate to £195 for each of the 66 flats. Again, the Tribunal felt that £150 per unit as stated by Mr. Comer in evidence was a more appropriate figure, which would result in a total management charge of £9900 per annum. Taking account of the management failings referred to above this amount should be reduced by 10%, or £990 to a total management charge of £8910.
70. Applying the same reduction to the window cleaning service as for Mill 1 would result in a reduction of 25% or £753.75.
71. Overall service charge for 2012 would be reduced by £4713.75

## 2013

72. The determination in relation to service charges for year ending 2013 relates only to budgeted figures as sought on account. The Tribunal felt that the budgets were reasonable in the light of previous expenditure.
73. **Summary**

### 112 East Float Quay Mill 1

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## 126 East Float Quay Mill 2

Period	Total Expenditure including redecoration and sinking funds	Tribunal's Determination	Proportion X 1.09729%
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2012	£97,646	£92,932.22	£1019.74
2013 (estimate)	£94,220	£94,220	£1033.87

### Legal Costs

74. The Respondent had added legal fees to the Respondent's service charge, and has provided detailed statements from their solicitor Mr. Boyd and Managing Agent Mr. Kirk in support of such fees being added.
75. Mr. Boyd stated that his firm had already billed profit costs of £2,552.50 up to May 2013, along with a Court Fee of £95 and Counsel's fees of £750 plus VAT, there was unbilled costs of £3,165 plus VAT, and further Counsel's fees of £850 plus VAT for the Tribunal hearing. These costs, disbursements and VAT would total £8,365.50. It is unclear how those costs relate to those shown as having been applied to the account histories for each flat which show legal costs charged to the accounts as follows:-
76. Flat 112:-  
 (a) 11.7.12: £106  
 (b) 29.7.13 £2,114  
 (c) 29.7.13 £1,521
77. Flat 126:-  
 (a) 11.9.12 £30
78. By Clause 7 of the Sixth Schedule the Lessee agrees to pay all "legal and other proper costs incurred by the Lessor in ... the enforcement of the covenants on the part of the Lessee". By Clause 11 of Part 1 of the Sixth Schedule to the lease the Lessee agrees to pay the legal and other costs of seeking a declaration that the Interim Maintenance Charge or the Maintenance Charge are reasonable, which the Tribunal was satisfied was sufficiently "clear and unambiguous" as per the judgment of Taylor LJ in **Sella House v Mears (1989) 21 H.L.R. 147** by the parties.
79. Having initially satisfied itself that the Respondent is entitled to recover legal costs as against the Applicant, the Tribunal must subsequently satisfy itself as to whether or not the costs sought are reasonable and reasonably incurred, in accordance with the principles of 19(1) Landlord and Tenant Act 1985; in addition the Applicant had made application under s20C Landlord and Tenant Act 1985 that those costs should not be regarded as relevant costs for service charge purposes.

80. The Tribunal noted that the Applicant had been paying on account towards her service charge, spasmodically from 2008, such that arrears in excess of £7,000 had accrued, but subsequently increasing payments to £50 per month from the start of 2012. However the amount paid was insufficient to meet current service charges or address arrears. The Respondent clearly needs to be able to recover service charges in a timely fashion to enable it to properly manage the Mills and the Applicant has no right to withhold payment.
81. The Applicant has over a sustained period of time sought disclosure of invoices, which had not been provided, and indeed were not produced in evidence before the Tribunal despite clearly being in issue; the Applicant had expressed concern about the management of the Mills, and the Tribunal had found for her on a number of the points that she made.
82. Better communication between the parties might have resulted in this matter being resolved more swiftly, and with less costs being incurred.
83. Taking into account all the circumstances, the Tribunal determined pursuant to s20c that the sum of £2091.37, (being 25% of the £8365.50 costs) incurred by the Respondent should not be regarded as relevant costs for the service charge.