



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

<b>Case Reference</b>	:	<b>DD/LON/00AZ/OCE/2017/0067</b>
<b>Property</b>	:	<b>80 Farley Road, Catford, London SE6 2AR</b>
<b>Applicants</b>	:	<b>Ms Violet Yvonne May (1) Mr John Bernard Morrissey (2)</b>
<b>Representative</b>	:	<b>Ms Katie Gray (Counsel) instructed by Parker Arrenberg Limited (Solicitors)</b>
<b>Respondent</b>	:	<b>Mr Praveen Kamlesh Anand</b>
<b>Representative</b>	:	<b>Mr K Kumar of KLPA &amp; Company (Managing Agents)</b>
<b>Type of Application</b>	:	<b>Section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993</b>
<b>Tribunal Members</b>	:	<b>Mr J Donegan (Tribunal Judge) Mr D Jagger FRICS (Valuer Member) Mrs H Gyselynck MRICS (Valuer Member)</b>
<b>Date and venue of Hearing</b>	:	<b>17 May 2017 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>10 August 2017</b>

---

**DECISION**

---

## Decisions of the Tribunal

- A. The appropriate sum to be paid into court by the applicants, pursuant to paragraphs 2 and 3 of the fifth schedule to the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') is £2,355.28 (Two Thousand, Three Hundred and Fifty-Five Pounds and Twenty-Eight Pence).**
- B. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') so that none of the respondent's costs of these Tribunal proceedings may be passed to the applicants through any service charge.**

## The background and procedural history

1. The respondent is the freeholder of 80 Farley Road, Catford, London SE6 2AR ('the Building'), which contains two flats. The first applicant ('Ms May') is the long leaseholder of Flat 1 on the ground floor flat and the second applicant ('Mr Morrissey') is the long leaseholder of Flat 2 on the first floor flat.
2. On 22 January 2016 the applicants served an initial notice on the respondent in which they were jointly named as the nominee purchaser, pursuant to section 13 of the 1993 Act. The notice proposed a purchase price of £23,772 for the freehold interest of the land edged red on the accompanying plan (at clause 7).
3. On 24 March 2016 the respondent served a counter-notice admitting the enfranchisement claim, without prejudice to the validity of the initial notice. Clause 1.3 included the following counter-proposals:  
*"A) The Proposed Price for the freehold of the property specified in section 7 of the initial notice to be as follows:*  
*(i). The Proposed Price £42,500.00 for the freehold interest &*  
*(ii). The Proposed Price £750.00 for the freehold interest in the appurtenant property*  
*B) On completion the Purchaser to account for all arrears of rents, of both two flats in the Building i.e.*  
*(1). Building insurance for all years in arrears and*  
*(2). All service charges arrears plus interest on all arrears @ Base rate Royal Bank of Scotland plc plus 4% until payment thereof."*
4. The applicants then submitted an application to the Tribunal to determine the terms of acquisition under section 24(1) of the 1993 Act, which was issued under case reference BG/LON/00AZ/OCE/16/0203.

The parties agreed the price of the freehold in the total sum of £36,250 on 05 September 2016.

5. On 23 December 2016 the applicants issued a Part 8 claim in the County Court at Bromley, under claim number C02BR337, seeking a vesting order under section 24(4) of the 1993 Act. The claim was heard by Deputy District Judge Turner on 16 March 2017, who made a vesting order. The respondent did not attend the hearing.
6. Paragraph 2 of the vesting order provided:

*“2. These proceedings shall be transferred to the First Tier Tribunal (Property Chamber) in order for the Tribunal to:*

  - a. Approve the form and provisions of the conveyance;*
  - b. Determine the amounts or estimated (sic) due, at the time of execution of the conveyance, to the Defendant by the Claimants under the terms of their leases or in respect of agreements collateral thereto.”*
7. The County Court proceedings were then transferred to the Tribunal and directions were issued on 22 March 2017.
8. The parties subsequently agreed the terms of the conveyance/transfer deed. This meant the only issues to be determined by the Tribunal are the amounts due to the respondent, under the applicants’ leases.
9. The respondent contends there are ground rent and service charge arrears for each flat, spanning the period 2010 to 2016. The sums claimed, which are disputed, are:

Flat 1 - £4,354.77

Flat 2 - £7,273.46

The Tribunal’s jurisdiction to determine these sums derives from section 24(3) and (4) of the 1993 Act together with paragraphs 2 and 3 of the fifth schedule to that Act.

10. The relevant legal provisions are set out in the appendix to this decision. The relevant lease terms are set out below.

### **The leases**

11. Both leases were granted by Guaranteed Investments Limited (*“the Lessor”*) on 15 April 1986, for a term of 99 years from 24 March 1986. The original lessee of the ground floor flat was Lynn Elizabeth Curtis and the original lessee of the first floor flat was Karen Margaret Glasby (*“the Lessee”*).

12. Both leases are in substantially the same form. Clause 1 contains various definitions, including:

*“(6) “the Accounting Period” shall mean a period commencing on the First day of January and ending on the Thirty First day of December in any year;”.*

13. The Lessor’s covenants are at clause 5, which includes:

*“(5) Subject to and conditional upon payment being made by the Lessee of the Interim Charge and the Service Charge at the times and in the manner hereinbefore provided:-*

*(a) To maintain and keep in good and substantial repair and condition:-*

*(i) the main structure of the Building including the principal internal timbers and joists and walls floors and ceilings and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other flat in the Building);*

*(ii) all such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of this Lease be enjoyed or used by the Lessee in common with the owners or tenants of the other flats in the Building;*

*(iii) the Common Parts;*

*(iv) all other parts of the Building not included in the foregoing subparagraphs (i) to (iii) and not included in this demise or the demise of any other flat or part of the Building PROVIDED that the Lessee should not be required to pay or contribute towards the cost of such repair or maintenance in respect of any flat in the Building not demised or any flat in the Building in the possession of the Lessor nor in respect of the garden;”*

14. Clause 5(c) requires the Lessor to insure the Building and clause 5(f) provides:

*“(f) (i) To employ at the Lessor’s discretion a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any part thereof:*

*(ii) To employ all such surveyors builder architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building;”*

15. The service charge proportion for each flat is 50% and the detailed service charge provisions are to be found in the fifth schedule, which is set out below:

*“1. In this Schedule the following expressions have the following meanings respectively:-*

- (1) *“Total Expenditure” means the total expenditure incurred by the Lessor in any Accounting Period in carrying out his obligations under Clause 5(5) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing*
- (a) *the cost of employing Managing Agents*
- (b) *the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Lessee hereunder.*
- (2) *“the Service Charge” means such percentage of Total expenditure as is specified in Paragraph 7 of the Particulars (in respect of the Accounting Period during which this Lease is executed) such proportion of such percentage as is attributable to the Period from the date of this Lease to the Thirty first day of December next following:-*
- (3) *“the Interim Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or his Managing Agents shall specify at their discretion to be a fair and reasonable interim payment.*

*2. In this Schedule any surplus carried forward from previous years shall not include any sums set aside for the purpose of Clause 5(5)(j) of this Lease.*

*3. The first payment of Interim Charge (on account of the Service Charge for the Accounting Period during which this Lease is executed) shall be made on the execution hereof and thereafter the Interim Charge shall be paid to the Lessor by equal payments in advance on the Twenty fourth day of June and the Twenty fifth day of December in each year and in case of default the same shall be recoverable from the Lessee as rent in arrears.*

*4. If the Interim Charge paid by the Lessee in respect of any Accounting Period exceeds the Service Charge for the period the surplus of the Interim Charge so paid over and above the Service Charge shall be carried forward by the Lessor and credited to the account of the Lessee in computing the Service Charge in succeeding Accounting Periods as hereinafter provided.*

*5. If the Service Charge in respect of any Accounting Period exceeds the Interim Charge paid by the Lessee in respect of that*

*Accounting Period together with any surplus from previous years carried forward as aforesaid then the Lessee shall pay the excess to the Lessor within (sic) twenty eight days of service upon the Lessee of the Certificate referred to in the following paragraph and in case of default the same shall be recoverable from the Lessees as rent in arrear.*

6. *As soon as practicable after the expiration of each Accounting Period there shall be served upon the Lessee by the Lessor or his Agents an account of expenditure incurred together with a certificate signed by such Agent containing the following information:-*

- (a) The amount of the Total Expenditure for that Accounting Period;*
- (b) The amount of the Interim Charge paid by the Lessee in respect of that Accounting Period together with any surplus carried forward from the previous Accounting Period;*
- (c) The amount of the Service Charge in respect of that Accounting Period any of any excess or deficiency of the Service Charge over the Interim Charge;*

7. *The said Certificate shall be conclusive and binding on the parties hereto but the Lessee shall be entitled at his own expense and upon prior payment of any costs to be incurred by the Lessor or his Agents at any time within one month after service of such Certificate to inspect the receipts and vouchers relating to payment of the Total Expenditure;*

8. *The percentage of Total Expenditure which shall comprise the Service Charge shall be the amount shown in Paragraph 7 of the below mentioned particulars where the Demised Premises is a basement flat with its own separate entrance the Service Charge shall not include any contribution to the cleaning and decoration of the internal common parts of the Building.”*

### **The hearing**

16. The hearing took place on 17 May 2017. The applicants were represented by Ms Gray (counsel) and the respondent was represented by Mr Kumar of the managing agents, KLPA & Company ('KLPA'). Mr Kumar is the respondent's father. Ms May and Mr Morrissey both attended the hearing. The respondent did not attend.
17. The Tribunal was supplied with two hearing bundles; one from the applicants and one from the respondent. The applicants' bundle contained copies of the County Court documents, the original section 24(1) application, the directions in the current proceedings, the leases, their statement of case and witness statements.

18. The respondent's bundle contained copies of various service charge documents, including accounts, demands, statements and vouchers. It also contained ground rent demands, the counterpart lease for Flat B, the current management agreement and the respondent's statement of case. This bundle had been poorly prepared and was difficult to follow with pages in the wrong order, inconsistent page numbering, several pages duplicated and some pages missing. This caused delays at the hearing, as the Tribunal members and the representatives tried to locate the correct documents.
19. The Tribunal was also supplied with a helpful skeleton argument from Ms Gray dated 15 May 2017. This identified the following issues:
  - (a) The contractual validity of some of the service charge demands;
  - (b) Whether the service charge demands complied with section 21B of the 1985 Act;
  - (c) Confusing and inconsistent demands;
  - (d) Mathematical errors in some of the demands;
  - (e) Inconsistencies between the statements of arrears and the sums demanded from the applicants;
  - (f) Reasonableness of fees charged by KLPA;
  - (g) Recoverability of interest; and
  - (h) The respondents' set-off claims, arising from alleged breaches of the respondent's repairing covenants.
20. Additional documents were filed shortly before the hearing, which included a second statement from Ms May, arrears statements from KLPA and various costs schedules. One of the schedules detailed the respondent's costs under section 33 of the 1993 Act. The Tribunal explained it was unable to determine these costs, as they did not form part of the case transferred from the County Court. If they cannot be agreed then either party can make a separate application to determine the section 33 costs.
21. At the start of the hearing, there was some discussion over the Tribunal's jurisdiction to determine any ground rent arrears. The Tribunal has no jurisdiction to determine ground rent on an application under section 27A of the 1985 Act. However, this is an application to determine "*the appropriate sum*" to be paid under paragraph 3 of the fifth schedule to the 1993 Act, which covers any amounts due under or

in respect of the leases or any collateral agreement. Accordingly the Tribunal is able to determine both the service charges and the ground rent. The only issue on the ground rent was whether the rents payable before June 2011 are time barred by virtue of section 19 of the Limitation Act 1980 ('the 1980 Act'). Mr Kumar conceded this point during the course of the hearing.

22. The Tribunal heard oral evidence from Ms May and Mr Morrissey. Ms May spoke to witness statements dated 5 and 15 May 2017, which gave details of her dealings with the respondent and KLPA and her ground rent and service charge payments. The statements also gave details of repairs to the ground floor bay window roof that she arranged in 2007.
23. Ms May was cross-examined at some length by Mr Kumar. It soon became apparent there was a factual dispute over the payments she had made. The Tribunal gave directions for the service of further evidence, to try and resolve this dispute. Following the hearing the Tribunal received supplemental statements from Ms May dated 30 May and 13 June 2017 together with submissions from KLPA dated 13 June and 3 July 2017. All of this additional evidence was admitted by the Tribunal, pursuant to rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules').
24. Mr Morrissey spoke to a statement dated 5 May 2017, which gave details of his dealings with the respondent and KLPA and roof repairs that he arranged in 2008.
25. The Tribunal found Ms May and Mr Morrissey to be honest and reliable witnesses and accept their evidence in its entirety. Ms May acknowledged an error in her original statement (see paragraph 64 below) and the Tribunal accepts this was an innocent mistake.
26. Mr Kumar conducted the hearing in a volatile manner; frequently shouting and becoming irate. His cross-examination of Ms May was unnecessarily aggressive and all three Tribunal members had to ask him to moderate his behaviour.
27. Mr Kumar mentioned that he was suffering from health problems and might need to take breaks during the hearing. The Tribunal made it clear that breaks would be permitted but none were requested.
28. In addition to the oral evidence, the Tribunal also heard submissions from Ms Gray and Mr Kumar. Having heard the evidence and submissions and considered all of the documents provided, including those filed after the hearing, the Tribunal has made the determinations set out below.



## **Section 21B of the 1985 Act**

29. This section provides that any service charge demand must be accompanied by a summary of rights and obligations, failing which the tenant may withhold payment of the charges and the lease provisions for late payment have no effect. It makes sense deal with this issue first, as a failure to comply would mean that none of the disputed service charges are currently due.
30. At paragraph 12 of his statement of case, the respondent referred to the service charge demands sent to the applicants and the accompanying summaries of rights of obligations. Copies of the demands and summaries were included in the respondent's bundle.
31. In her skeleton argument, Ms Gray pointed out that the summaries in respondent's bundle, for 2010, 2011 and 2012 all referred to the First-tier Tribunal ('F-tT'). However, the F-tT did not come into existence until 1 July 2013. Its predecessor was the Leasehold Valuation Tribunal ('LVT') and the summaries accompanying the 2010-12 demands should have referred to the LVT. Ms Gray justifiably submitted that the summaries relied on by the respondent could not have accompanied the 2010-12 demands, in which case these demands were not payable. However, she went further and submitted that the Tribunal could not be sure that valid summaries had been served with any of demands for 2010-16 and that none of these service charges were payable. She put the respondent to strict proof that valid summaries had been served
32. In his oral submissions, Mr Kumar suggested there had been an error in the preparation of the respondent's bundle and that incorrect summaries of rights and obligations had been included for 2010-12. He was adamant that valid summaries had accompanied each demand.

## **The Tribunal's decision**

33. The applicants are not entitled to withhold payment of the disputed service charges by virtue of section 21B.

## **Reasons for the Tribunal's decision**

34. There was as some force in Ms Gray's submissions but this was largely undermined by the documents exhibited to Ms May's first statement, which included a selection of service charge documents from KLPA. Copies of the 2012 service charge accounts and the accompanying demand and summary of rights were at pages 58-60 of the exhibit (pages 257-259 of the applicants' bundle). This summary correctly referred to the LVT and had clearly been received by Ms May. This supported Mr Kumar's contention that valid summaries had accompanied the demands.

35. The section 21B argument was not addressed in the applicants' statement of case or witness statements. Rather it was only raised in Ms Gray's skeleton argument, served shortly before the hearing. In these circumstances it was incumbent on the applicants to put forward a positive case rather than putting the respondent to proof, which they failed to do.
36. The Tribunal is satisfied, on the balance of probabilities that the demands were accompanied by valid summaries and that incorrect summaries had been included in the respondent's bundle, in error.

### **Contractual validity of service charge demands**

37. The respondent's bundle included copies of the service charge accounts for 2010 and 2012 to 2016. KLPA supplied copies of the 2011 accounts on 31 July 2017, at the Tribunal's request. The only expenses claimed in each set of accounts were the insurance premium, an accountant's fee and KLPA's management fee.
38. Ms Gray submitted that many of these expenses had been claimed in the wrong accounting period. The buildings insurance is renewed at the end of December in each year. Copy invoices from the insurance brokers, BK insurance were included the respondents' bundle. The sums charged in the accounts and invoiced by BK Insurance are set out below:

#### Accounts

2010	£793.90.
2011	£892.81.
2012	£829.81
2013	£869.64
2014	£947.05
2015	£1,032.28
2016	£767.69

#### BK Insurance Invoices

31/12/09	£793.90
31/12/10	£813.13
31/12/11	£829.81
31/12/12	£869.64
31/12/13	£947.04
31/12/14	£1,032.28
31/12/15	£767.69
31/12/16	£887.00

39. The other disputed expenses were:

Y/E

2010	Accountant's fee of £100 invoiced on 5 January 2011
2011	Accountant's fee of £120 invoiced on 5 January 2012 (incorrect fee of £100 charged in accounts)
2012	Accountant's fee of £100 invoiced on 4 January 2013 and paid on 11 January 2013 (incorrect fee of £120 charged in accounts)
2013	Accountant's fee of £120 invoiced on 4 January 2014 and paid on 10 January 2014
2014	Accountant's fee of £120 invoiced on 5 January 2015 and paid on 9 January 2015
2015	Accountant's fee of £125 invoiced on 5 January 2016 and paid on 8 January 2016
2016	Accountant's fee of £125 invoiced on 4 January 2017 and paid on 11 January 2017. KLPA's management fee of £570 invoiced on 19 December 2016 and paid on 4 January 2017

40. Ms Gray submitted that the service charge expenses should be claimed in the financial year they were paid. Alternatively, they should be claimed in the year they were invoiced. Expenses claimed in the wrong financial year should be disallowed. The Tribunal pointed out that if expenses were disallowed on this basis, the respondent could try and reissue the accounts and claim the expenses in the correct year. Ms Gray acknowledged this possibility but submitted that corrected accounts might fall foul the '18-month rule' at section 20B of the 1985 Act.
41. Mr Kumar submitted that service charge expenses should be claimed in the financial year they relate to, rather than the year they are invoiced or paid. If the Tribunal disagrees then the accounts will be reissued and the respondent will then rely on section 20B(2) of the 1985 Act.

### **The Tribunal's decision**

42. The Tribunal allows the insurance premiums charged in 2010, 2012, 2013, 2014, 2015 and 2016 in full. The premium for 2011 is reduced to £813.13.
43. The Tribunal disallows the accountant's fees for 2010-2016.
44. The management fee invoiced on 19 December 2016 was correctly charged in the 2016 accounts but is not payable by virtue of paragraph 80 of this decision.

## Reasons for the Tribunal's decision

45. The definition of Total Expenditure in the fifth schedule of the leases, refers to “...*the total expenditure incurred by the Lessor in any accounting period in carrying out its obligations under Clause 5 of this lease...*”.
46. In ***OM Property Management Limited v Burr [2013] EWCA Civ 479***, the Court of Appeal upheld the Upper Tribunal's decision that costs are not 'incurred' within the meaning of sections 18, 19 and 20B of the 1985 Act on the mere provision of services or supplied to the landlord or management company. It did not find it necessary to decide whether costs are incurred on presentation of an invoice (or other demand for payment) or on payment. However, it is one or other.
47. The earliest dates on which the insurance premiums were incurred were the dates the respondent received the invoices from BK Insurance. These invoices were all dated 31 December and were addressed to the respondent at Ground Floor Flat, 28 Park Royal, London NW10 7JW. Assuming the invoices were sent by first class post then the earliest date on which each was received was 2 January, as 1 January is a bank holiday. It follows that each invoice was incurred in the financial year after it was issued. For example, the invoice dated 31 December 2009 was incurred in the year ended 31 December 2010.
48. In all but one year, the insurance premiums have been charged correctly. The exception is the 2011 accounts where the sum charged was £893.81 but the corresponding invoice, dated 31 December 2010, was for £813.13. Accordingly the premium for 2011 is reduced to £813.13.
49. The accountant's fees for 2010-2016 have all been charged in the wrong financial years and are irrecoverable. Again, the earliest date on which each fee was incurred was the date the respondent received the accountant's invoice. Each invoice was issued after the end of the financial year and has been charged prematurely. For example, the invoice for preparing the 2010 accounts, dated 5 January 2011, was incorrectly charged in the 2010 accounts when it should have been charged in 2011.
50. The respondent's bundle contained an incomplete copy of KLPA's management agreement, dated 4 January 2016. KLPA supplied a copy of the missing page on 31 July 2017, at the request of the Tribunal. The agreement does not stipulate how the management fees are to be paid but does provide for a review in December of each year. The management fee for 2016 was invoiced on 19 December 2016, before the year end but paid on 4 January 2017. The invoice was addressed to the respondent at 59 Allan Way, Acton, London W3 0PW. Assuming it was sent by first class post then it should have been delivered on or

about 20 December 2016. The respondent became liable to pay this fee, upon receipt of the invoice. The Tribunal finds that the invoice was received by 31 December 2016, which mean it was correctly charged in the 2016 accounts. However, the Tribunal has disallowed all of KLPA's management fees at paragraph 80 of this decision.

51. It may be that the respondent will reissue the service charge accounts and claim the accountant's fees in the correct years. Whether these fees would then be recoverable is an argument for another day. In that event any of the parties could make an application to the Tribunal under section 27A of the 1985 Act, to determine the accountant's fees. The effect of the 18-month rule and section 20B(2) could be considered on such an application.

**Confusing and inconsistent demands/Mathematical errors in some of the demands/Inconsistencies between the statements of arrears and the sums demanded from the applicants**

52. It is convenient to deal with these three issues together. They do not require a determination but are relevant to the disputed management fees. The applicants complain that the demands in the respondents' bundle are different to those sent to them previously. They also complain that the demands are littered with spelling and other errors and requests for clarification or to inspect vouchers were ignored by KLPA.
53. Mathematical errors include incorrect figures in the Flat 2 demand dated 5 January 2012, an incorrect sum charged for management fees in the 2011 accounts (£450 rather than £500), an incorrect sum charged for accountancy fees in the 2012 accounts (£120 rather than £100) and inconsistencies between the sums charged in the 2011 accounts and the accompanying certificate.
54. The respondent relied on the arrears statements that were produced shortly before the hearing. Mr Kumar did not respond to the criticisms of the service charge demands and statements, which were well founded. The demands were densely typed with differing font sizes, a mixture of typefaces and random underlining. In many places the text was confusing. For example, the demand for Flat 1 dated 6 January 2012 included the following:

*"If you like to inspect the invoices & vouchers concerning the expenditure concerning the enclosed statement of costs, PLEASE make an appointment with our office by telephone OR IN WRITING ONLY where you will be welcome to inspect vouchers & invoices and make a manual copy if you want it; free of any charge."*

It is unclear to the Tribunal whether such an appointment could be made by telephone or only in writing.

55. The arrears statements were also difficult to follow with confusing entries, some of which were out of chronological order and differing font sizes. They incorrectly state that interest is to be added to the arrears, which is dealt with at paragraphs 56-60 below.

### **Interest**

56. It is convenient to deal with the interest and set-off claims before the disputed management fees, as they both have a bearing on the reasonableness of those fees.
57. The applicants' position on interest is very straightforward. They contend that no interest is payable, as there is no contractual provision for interest in the leases. Mr Kumar's response was that interest was not claimed under the leases. Rather the respondent was claiming "*general commercial interest*". Mr Kumar did not refer to any authority in support of the interest claim.

### **The Tribunal's decision**

58. The interest claim is disallowed. The respondent is not entitled to recover interest on any arrears.

### **Reasons for the Tribunal's decision**

59. There is no contractual provision in the leases for interest on late payment. The onus was on Mr Kumar to establish another basis for claiming interest, which he failed to do. He did not refer to any authority in support of the claim for "*general commercial interest*". There was no suggestion that interest was claimed under the County Courts Act 1984 or the Late Payment of Commercial Debts (Interest) Act 1988.
60. The documents revealed inconsistencies in the interest claim. At paragraph 1.3 of the counter-notice, interest was claimed "*..Base rate Royal Bank of Scotland plc plus 4% until payment thereof.*" The official bank base rate is currently 0.25%, which suggest that interest was being claimed at 4.25%. However, a payment reminder for Flat 1 dated 10 January 2015 stated "*PLEASE NOTE INTEREST WILL BE CHARGED IN ADDITION TO THE PREMIUM FROM THE STATED DATE OF 1<sup>ST</sup>. JANUARY UNTIL PAID @ 8% p.a.*"

### **Set-off**

61. In her skeleton argument, Ms Gray submitted that the Tribunal could take account of the applicants' claims to set-off sums they have incurred in remedying the respondent's breaches of his repairing covenants. The

applicants gave details of these breaches in their witness statements and oral evidence.

62. Ms May has owned Flat 1 since 2005. To the best of her knowledge, no maintenance or inspections have been undertaken by the respondent or KLPA, during her period of ownership. Her attempts to speak to them have been met with hostility and verbal abuse and her letters have been ignored.
63. Ms May arranged repairs to the to the ground floor bay window roof at the front and back of her flat in 2008. She previously reported problems with the roof to KLPA, by telephone but her calls were met with verbal abuse and threats.
64. In her original statement Ms May explained that the repairs were undertaken by Grant Roofing Limited ('GRL') at a cost of £800 but that she no longer had the receipt. By the time of the hearing, she has obtained a copy of the receipt, which was dated 19 June 2008. This was very faint but revealed the cost of the repairs was actually £675, rather than £800. Ms May acknowledged that the £800 figure was incorrect, during the hearing.
65. Mr Morrissey has owned Flat 2 since 1998. As far as he is aware, the respondent has not undertaken any maintenance or repairs to the Building over the last 19 years. His experiences of KLPA were similar to Ms May's, with enquiries and requests for vouchers ignored. He tried to meet with KLPA shortly after purchasing his flat but encountered a hostile response when he rang on the office doorbell.
66. Mr Morrissey arranged the complete replacement of the roof slates in 2008, following leaks into his flat that started in 2007. He reported these leaks too by leaving messages on KLPA's answerphone but received no response. The leaks increased with water pouring into the flat during heavy rainfall. Eventually, Mr Morrissey instructed GRL to replace the slates. The total cost of this work was £4,500, as evidenced by a receipt from GRL dated 25 June 2008.
67. The applicants seek to set-off half the amount of the GRL repairs paid by them, against their ground rent and service charge liability. In Ms May's case this is £337.50. For Mr Morrissey it is £2,250.
68. Mr Kumar disputed the set-off claims and denied the allegations of disrepair. He inspects the outside of the Building from time to time, to check the condition. His most recent inspection was in May 2016, when he found the roof to be in perfect condition. He was unaware that the slates had been replaced, at the time of the inspection.

69. Mr Kumar explained that the respondent's general policy is to keep service charge expenditure to a minimum and suggested that his hands were tied, when it came to arranging repairs, as he acts on the respondent's instructions. He accepted there had been no repairs to the Building during the period 2010-2016, as evidenced by the service charge accounts for these years
70. Mr Kumar suggested the applicants should have pursued claims disrepair claims to compel the respondent to undertake the necessary works, rather than arrange the repairs themselves. Alternatively, they should have obtained at least two quotes for the repairs.

### **The Tribunal's decision**

71. The set-off claims are disallowed. The applicants are not entitled to set-off any sums against the appropriate sum to be paid into court.

### **Reasons for the Tribunal's decision**

72. The Tribunal has considerable sympathy for the applicants. The respondent and KLPA have adopted a 'hands-off' approach to the maintenance and management of the Building. There was no evidence of any maintenance or repairs arranged by them and no documentary evidence of Mr Kumar's inspections. It is no defence that the respondent operates a policy of minimising service charges. He must comply with the repairing obligations in the leases to ensure the Building is properly maintained.
73. KLPA did not respond when defects were reported and were difficult to communicate with. Given Mr Kumar's conduct at the hearing, the Tribunal readily accepts that telephone calls to KLPA were met with hostility. However, there was insufficient evidence to establish the applicants' set-off claims. In particular there was no evidence they gave advance warning of their intention to arrange the repairs. At the very least, they should have written to KLPA identifying the disrepair and the remedial works required and allowed a reasonable period for completion of these works. At the end of that period they should have written again, explaining they would arrange the works unless repairs were undertaken during a realistic timescale. There was no evidence that such letters (or emails) were sent. Given the nature of the disrepair and the cost of the works, it was insufficient to rely on telephone communications.

### **KLPA's fees**

74. KLPA's management fees ranged from £450 per annum to £570 per annum, over the period 2010 to 2016. The applicants contend that these fees should be disallowed in full, given the poor service provided.



In her skeleton argument, Ms Gray referred to various failings some of which were breaches of the RICS Service Charge Residential Management Code. These include poorly presented and invalid service charge demands, incorrect interest charges, the absence of periodic inspections and a failure to account for payments and bank cheques. She also referred to difficulties in contacting KLPA and their failure to respond to enquiries, which was corroborated by Ms May and Mr Morrissey. The service charge demands only give a mobile telephone number and state "*PLEASE DO NOT LEAVE MESSAGE*".

75. Ms Gray pointed out that the respondent does not contract with KLPA at arm's length. Mr Kumar is his father, which should put the Tribunal on enquiry and the respondent has not tested the market for managing agents.
76. As explained at paragraph 37 above, the only service charge expenses in the 2010-16 accounts were buildings insurance and accountancy and management fees. No maintenance or repairs were arranged during this period, which has been motivated by the respondent's desire to limit expenditure.
77. The insurance invoices were all addressed the respondent, which suggests that he arranges the insurance. The work undertaken by KLPA is very limited and is largely restricted to issuing demands.
78. Mr Kumar relied on paragraph 7 of the fifth schedule to the leases. He contended that the applicants were precluded from challenging any of the service charges, as the managing agents' certificates were conclusive and binding. Ms Gray submitted that such a provision was void, by virtue of section 27(6) of the 1985 Act.
79. Mr Kumar also relied on the management agreement in the respondent's bundle together with the KLPA's invoices. There are inconsistencies in these invoices. For example, the invoice dated 20 December 2011, 16 December 2014, 20 December 2015 and 19 December 2016 all referred to inspections of the Building in May and November 2011. The 2011 inspections, if undertaken, should only have been included in the 2011 invoice. The invoice dated 16 December 2014 gave two different figures for the management fee, "*£550.00*" and "*FOUR HUNDRED & FIFTY POUNDS*".

### **The Tribunal's decision**

80. The management fees for 2010-16 are disallowed in full.

## **Reasons for the Tribunal's decision**

81. The Tribunal agrees with Ms Gray. Paragraph 7 of the fifth schedule of the lease is void, in so far as it provides that the managing agents' certificate is conclusive and binding. The Tribunal is able to determine whether the management fees are payable, notwithstanding the annual certificates.
82. The applicants' criticisms of KLPA are well founded. Very little work has been undertaken, to justify their charges. They have not organised any maintenance or repairs and do little more than act as collection agents. Their service charge demands and statements are unclear and poorly presented, interest has been charged incorrectly, they have failed to account for payments and have failed to respond to enquiries, requests for vouchers and reports of disrepair.
83. There have been numerous breaches of the RICS Code including a failure to respond promptly to reasonable requests for information (Part 4.2), a failure to meet contact standards (Part 4.6), a failure to produce clear service charge demands (Part 7.7) and a failure to deal promptly with reports of disrepair. Managing agents must communicate with leaseholders and requests for assistance should not be met with hostility.
84. The service provided by KLPA fell substantially short of the standard expected of reasonably competent managing agents. The Tribunal considered whether a reduction in the fees would be appropriate but concluded the fees should be disallowed, in their entirety. In the words of Ms Gray "*no reasonable person would pay anything for this management*".

## **Payments made by the applicants**

85. Mr Kumar relied on the arrears statements, filed just before the hearing. As stated earlier, these were poorly presented and confusing.
86. Mr Morrissey has made no ground rent or service charge payments since 2010. The arrears statement for his flat showed an opening debit balance of £2,093.70, as at 27 January 2011. £250 of this sum was for ground rent arrears, which are time barred. The adjusted opening balance figure is £1,843.70, which was not contested.
87. The arrears statement for Flat A showed an opening balance of £984.45, as at 10 January 2009. £150 of this sum was for time-barred rent arrears and the adjusted opening balance is £834.45. Again this was not contested. The ground rents claimed for 2009 and 2010, totalling £100, have been paid.

88. Ms May has made numerous payments to KLPA, which were addressed in her second, third and fourth statements. The Tribunal has worked from the fourth statement dated 13 June 2017, which listed various payments. These are summarised below, with KLPA's responses

<b>No</b>	<b>Amount</b>	<b>Date</b>	<b>Ms May Evidence</b>	<b>KLPA response</b>
1	£717.89	17.03.06	Cheque payment - bank statement entry 21.03.06	Credited 10.02.09
2	£50.00	2007	Cheque tendered but not cashed	No evidence - time barred
3	£383.91	06.01.07	Cheque stub and bank statement entry 08.01.07	Credited 10.02.09
4	£383.91	16.01.08	Bank statement entry 21.01.08	Credited - no date given
5	£80.00	17.01.08	Cheque stub and bank statement entry 29.01.07	No evidence - time barred
6	£185.00	17.01.08	Cheque stub blank and bank statement entry 24.01.08	No evidence - time barred
7	£414.78	02.01.09	Cheque payment - bank statement entry 06.01.09	Credited 10.02.09
8	£984.45	27.02.09	Cheque tendered but not cashed	False claim
9	£40.00	27.02.09	Cheque tendered but not cashed	False claim
10	£1,803.00	27.01.10	Telephone banking payment - bank statement entry 28.01.10	No evidence - time barred
11	£25.00	27.01.10	Telephone banking payment - bank statement entry 28.01.10	No evidence - time barred
12	£492.55	29.12.10	Cheque payment - bank statement	Disputed - no cheque stub

			entry 06.01.11	produced
13	£721.42	01.11	Withdrawn - duplicate of item 17	False claim
14	£275.00	02.02.11	Online payment - bank statement entry 02.02.11	New claim - not admissible
15	£613.37	20.12.11	Cheque payment - bank statement entry 29.12.11	£513.37 credited (not £613.37)
16	£25.00	20.12.11	Cheque payment - bank statement entry 29.12.11	Credited - 30.01.17
17	£721.42	25.01.12	Cheque payment - bank statement entry 07.02.12	Credited - 30.11.12
18	£724.92	19.01.13	Cheque payment - bank statement entry 28.01.13 covering this item and item 19	Credited 30.11.13
19	£50.00	19.01.13	See item 18	Credited 30.11.13
20	£596.55	02.01.14	Cheque payment - bank statement entry 09.01.14	Disputed - no cheque stub produced
21	£593.56	30.12.14	Cheque payment - bank statement entry 26.01.15 covering this item and item 22	Credited 30.11.15
22	£50.00	30.12.14	See item 21	Credited 30.11.15
23	£732.32	09.05.14	Cheque tendered but not cashed	False claim
24	£7.50	09.05.14	Cheque tendered but not cashed	False claim
25	£560.03	July 15	Claim withdrawn and replaced with item 29	False claim

26	£551.84	30.12.15	Cheque payment - bank statement entry 13.01.16 covering this item and item 27	Credited 30.01.17
27	£50.00	30.12.15	See item 26	Credited 30.01.17
28	£601.15	30.12.15	Claim withdrawn. Duplicate of items 26/27	False claim
29	£560.03	30.12.16	Cheque sent by special delivery but not signed for	False claim
30	£556.37	13.01.17	Cheque payment - bank statement entry 10.02.17	Disputed - no cheque stub produced

89. The items numbered 1, 3, 4, 7, 18, 19, 21, 22, 26 and 27 are uncontroversial. They have all been acknowledged by KLPA and most of them show in the statement of arrears, albeit there are inconsistencies in the credit dates.
90. Items 13, 25, 28 and 29 are also uncontroversial. Ms May has acknowledged that 13, 25 and 28 were duplicated and the letter enclosing payment 29 was not delivered.
91. There was a factual dispute over the amount of item 15. Ms May stated the payment was £613.37 whereas KLPA stated it was £513.37. The bank statement exhibited to Ms May's second statement showed the payment as £613.37.
92. Items 2, 8, 9, 23 and 24 involve sums tendered by Ms May but not banked by KLPA. Ms Gray submitted that these sums should be credited to Ms May's service charge account, as they had been validly tendered. She relied on the Court of Appeal's decision in *Homes v Smith [2000] 1999/0300/B2*, which concerned a house purchase where the buyers failed to complete in accordance with the contract. Following commencement of proceedings, the buyers paid part of the contract sum. The parties completed on the basis of a promissory note, requiring an additional sum to be paid by 2.00pm on 25 September 1998. If payment was made by this deadline then the additional sum was capped at £21,642.50. If not, the additional sum was £36,462.50 plus interest. The buyers tendered a cheque for £21,642.50 between 11am and midday on 25 September 1998, which was banked by the sellers' solicitors. The sellers subsequently pursued a claim for the

difference between the two figures plus interest, contending that payment was not made until the cheque cleared (after the deadline). The County Court Judge concluded that the payment was not capable of being treated as having complied with the promissory note. However, the Court of Appeal found that the delivery of the cheque constituted a payment before the deadline. It was then a matter for the sellers whether to accept the cheque, which operated as a conditional payment from the time it was delivered. The payment ceased to be conditional once the cheque cleared.

93. KLPA described these five items as false claims, presumably on the basis that the cheques had not been banked. However, they failed to state whether the cheques had been received and, if so, why they were not banked. Copies of Ms May's covering letters, enclosing the cheques, were exhibited to her first statement.
94. Items 5, 6, 10, 11, 12, 14, 20 and 30 were rejected by KLPA on evidential grounds and/or were said to be time barred. They did not refer to any specific provision in the 1980 Act. Ms May relied on bank statements exhibited to her third and fourth witness statements and payment 5 was also evidenced by a stub from her chequebook.

### **The Tribunal's decision**

95. The Tribunal determines that items numbered 1, 3, 4, 5, 6, 7, 10, 11, 12, 14, 15, 18, 19, 20, 21, 22, 26, 27 and 30 should all be credited to the ground rent and service charge account for Flat A. In the case of item 15, the amount to be credited is £613.37. .

### **Reasons for the Tribunal's decision**

96. Items 1, 3, 4, 7, 18, 19, 21, 22, 26 and 27 were clearly paid, as they have been acknowledged by KLPA. These payments should all be credited to Flat A's account. Item 15 has also been acknowledged. The only issue is the amount of this payment. The Tribunal finds that the sum paid (and to be credited) is £613.37, being the sum debited from Ms May's bank account.
97. Items 13, 25, 28 and 29 must all be disregarded. KLPA were wrong to describe these as false claims. Ms May was trying to identify and prove payments made over several years, with no cooperation from them. This was not an easy task and the Tribunal finds that any errors in her witness statements were innocent mistakes.
98. The Tribunal finds that items 2, 8, 9, 23 and 24 were validly tendered by Ms May. There was clear evidence that cheques were sent to KLPA, in the form of the covering letters. These were conditional payments. However, the cheques were not banked for reasons unexplained by

KLPA. These conditional payments were not accepted, unlike the buyers' payment in *Homes*. The sums tendered have not been paid from Ms May's bank account and should not be credited to Flat A's account.

99. The Tribunal determines that items 5, 6, 10, 11, 12, 14, 20 and 30 were all paid to KLPA and should be credited to Flat A's account. There was sufficient evidence to establish these payments in the form of Ms May's bank statements and KLPA failed to rebut this evidence. They could have disclosed their bank statements to show whether these payments were credited to their account but failed to do so. In the absence of rebuttal evidence, the Tribunal accepts that all eight payments were made.
100. The Tribunal does not understand KLPA's limitation point. Ms May is not seeking to recover any of her payments to KLPA. Rather she wants the payments to be credited to her ground rent and service charge account. These payments must be credited, whenever made and are not time-barred.

### **Summary**

101. The Tribunal has determined that the following service charges are payable for each flat for the years ended 2010-16:

#### **2010**

Insurance	£793.30
Accountant's fees	£0
Managing agents' fees	£0
	£793.90 x 50% = £396.95

#### **2011**

Insurance	£813.13
Accountant's fees	£0
Managing agents' fees	£0
	£813.13 x 50% = £406.57 (rounded up)

#### **2012**

Insurance	£829.81
Accountant's fees	£0
Managing agents' fees	£0
	£829.81 x 50% = £414.91 (rounded up)

2013

Insurance	£869.64
Accountant's fees	£0
Managing agents' fees	<u>£0</u>
	£869.64 x 50% = £434.82

2014

Insurance	£947.05
Accountant's fees	£0
Managing agents' fees	<u>£0</u>
	£947.05 x 50% = £473.53 (rounded up)

2015

Insurance	£1,032.28
Accountant's fees	£0
Managing agents' fees	<u>£0</u>
	£1,032.28 x 50% = £516.14

2016

Insurance	£767.79
Accountant's fees	£0
Managing agents' fees	<u>£0</u>
	£767.79 x 50% = £383.90 (rounded up)

102. Based on the Tribunal's determinations there is a credit balance for Flat A of £2,840.64 and a debit balance for Flat B of £5,195.92, as detailed in the spreadsheets attached to this decision. The appropriate sum to be paid into court pursuant to paragraphs 2 and 5 of the fifth schedule to the 1993 Act is the total of these figures, namely £2,355.28 (Two Thousand, Three Hundred and Fifty-Five Pounds and Twenty-Eight Pence).
103. The spreadsheets do not include any service charges for the year ended December 2009, as these were not shown in the arrears statements produced by KLPA and were not referred to by Ms Gray or Mr Kumar.

**Section 20C**

104. At the end of the hearing, Ms Gray applied for an order under section 20C of the 1985 Act. This was opposed by Mr Kumar. He acknowledged that the outcome of the section 20C application would largely turn on the outcome of the main case but also referred to Mr



Morrissey's failure to pay any ground rent or service charges in recent years.

105. Having considered the submissions from both representatives and taking into account the determinations above, the Tribunal determines that it is just and equitable to make a section 20C order. The respondent may not pass any of its costs of these proceedings through the service charge account for the Building.
106. The applicants have been largely successful in these proceedings and have secured substantial reductions in the ground rent and service charges claimed for their flats. The arrears claimed for Flat A were £4,354.77 whereas the Tribunal has determined there is a credit balance of £2,840.64. The arrears claimed for Flat B were £7,273.46 and have been reduced to £5,195.92. Mr Morrissey's decision to withhold payments was justified given the confusing documents produced by KLPA, their failure to respond to reasonable enquiries and unhelpful management style.
107. Given the outcome of this case it would be inequitable for the applicants to pay any part of the respondent's costs of these proceedings.

**Name:** Tribunal Judge Donegan **Date:** 10 August 2017

#### **RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **Appendix of relevant legal provisions**

### **Limitation Act 1980**

#### **Section 19**

##### **Time limit for actions to recover rent.**

No action shall be brought, and the power conferred by section 72(1) of the Tribunals, Courts and Enforcement Act 2007 shall not be exercisable, to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of six years from the date on which the arrears became due.

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (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.

#### **Section 19**

- (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 provisions 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.

**Section 20B**

- (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.

**Section 20C**

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

### **Section 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provision of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **Section 27A**

- (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.

**The Leasehold Reform, Housing and Urban Development Act 1993**  
**Section 24 Applications where terms in dispute or failure to enter contract**

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser -

- (a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or
- (b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period two months beginning with the date on which the counter-notice or further counter-notice was so given, the appropriate tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser

(3) Where -

- (a) the reversioner has given the nominee purchaser such a counter-notice or further counter-notice mentioned as is mentioned in subsection (1)(a) or (b), and
- (b) all of the terms of acquisition have been either agreed between the parties or determined by the appropriate tribunal under subsection (1),

but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may, on the application of either the nominee purchaser or the reversioner make such order under subsection (4) as it thinks fit.

(4) The court may under this subsection make an order -

(a) providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (3);

(b) providing for those interests to be vested in him on those terms, but subject to such modifications as –

(i) may have been determined by the appropriate tribunal, on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection, and

(ii) are specified in the order, or

(c) providing for the initial notice to be to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

...

## **Schedule 5** **Vesting Orders Under Sections 24 and 25**

### *Interpretation*

1. - (1) In this Schedule “a vesting order” means an order made by the court under section 24(4)(a) or (b) or section 25(6)(a) or (b).

(2) In this Schedule “the relevant terms of acquisition”, in relation to any such order, means the terms of acquisition referred to in section 24(4)(a) or (b) or section 25(6)(a) or (b), as the case may be.

### *Execution of conveyance*

2. - (1) Where any interests are to be vested in the nominee purchaser by virtue of a vesting order, then on his paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which –

(a) is in a form approved by the appropriate tribunal, and

(b) contains such provisions as may be so approved for the purpose of giving effect to the relevant terms of acquisition.

(2) The conveyance shall be effective to vest in the nominee purchaser the interests expressed to be conveyed, subject to and in accordance with the terms of the conveyance.

### *The appropriate sum*

3. - (1) In the case of any vesting order, the appropriate sum which in accordance with paragraph 2(1) is to be paid into court in respect of any interest is the aggregate of –
- (a) such amount as is fixed by the relevant terms of acquisition as the price which is payable in accordance with Schedule 6 in respect of that interest; and
  - (b) any amounts or estimated amounts determined by the appropriate tribunal as being, as the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).
- (2) In this paragraph “the transferor” in relation to any interest, means the person from whom the interest is to be acquired by the nominee purchaser.

...

**The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

**Rule 6**

**Case management powers**

6. - (1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
- (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.
- (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may –
- (a) extend or shorten the time for complying with any rule, practice direction or direction, even if the application for an extension is not made until after the time limit has expired;
  - (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether under rule 23 or otherwise);
  - (c) permit or require a party to amend a document;
  - (d) permit or require a party or another person to provide or produce documents, information or submissions to any or all of the following –
    - (i) the Tribunal;

- (ii) a party;
- (iii) in land registration cases, the registrar;
- (e) direct that enquiries be made of any person;
- (f) require a party to state whether that party intends to –
  - (i) attend,
  - (ii) be represented, or
  - (iii) call witnesses,
 at the hearing;
- (g) deal with an issue in the proceedings as a preliminary issue;
- (h) hold a hearing to consider any matter, including a case management issue;
- (i) decide the form of any hearing;
- (j) adjourn or postpone a hearing;
- (k) require a party to produce a bundle for a hearing;
- (l) require a party to provide an estimate of the length of the hearing;
- (m) stay proceedings;
- (n) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and
  - (i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (o) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

**The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

**Rule 3**

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes –



- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
  - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
  - (d) using any special expertise of the Tribunal effectively; and
  - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it –
- (a) exercises any power under these Rules; or
  - (b) interprets any rule or practice direction.
- (4) Parties must
- (a) help the Tribunal to further the overriding objective; and
  - (b) co-operate with the Tribunal generally.

**Rule 13 (1)**

The Tribunal may make an order in respect of costs only –

- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
  - (i) an agricultural and land drainage case,
  - (ii) a residential property case, or
  - (iii) a leasehold case; or
- (c) in a land registration case.

.....

FLAT 1, 80 FARLEY ROAD, LONDON SE6 2AR  
 ADJUSTED GROUND RENT AND SERVICE CHARGE STATEMENT

DATE	DESCRIPTION	DEBIT	CREDIT	BALANCE
10.02.09	Adjusted opening balance	£834.45		-£834.45
25.12.09	Ground rent	£25.00		-£859.45
27.01.10	Telephone banking payment from Ms May		£1,803.00	£943.55
27.01.10	Telephone banking payment from Ms May		£25.00	£968.55
25.06.10	Ground rent	£25.00		£943.55
25.12.10	Ground rent	£25.00		£918.55
29.12.10	Cheque payment from Ms May		£492.55	£1,411.10
	Adjusted service charge for year ended 31.12.10	£396.95		£1,014.15
02.02.11	Online payment from Ms May		£275.00	£1,289.15
25.06.11	Ground rent	£25.00		£1,264.15
20.12.11	Cheque payment from Ms May		£613.37	£1,877.52
20.12.11	Cheque payment from Ms May		£25.00	£1,902.52
25.12.11	Ground rent	£25.00		£1,877.52
	Adjusted service charge for year ended 31.12.11	£406.57		£1,470.95
25.01.12	Cheque payment from Ms May		£721.42	£2,192.37
24.06.17	Ground rent	£25.00		£2,167.37
25.12.12	Ground rent	£25.00		£2,142.37
	Adjusted service charge for year ended 31.12.12	£414.91		£1,727.46
19.01.13	Cheque payment from Ms May		£774.92	£2,502.38
24.06.13	Ground rent	£25.00		£2,477.38
25.12.13	Ground rent	£25.00		£2,452.38
	Adjusted service charge for year ended 31.12.13	£434.82		£2,017.56
02.01.14	Cheque payment from Ms May		£569.55	£2,587.11
24.06.14	Ground rent	£25.00		£2,562.11
25.12.14	Ground rent	£25.00		£2,537.11
30.12.14	Cheque payment from Ms May		£643.56	£3,180.67
	Adjusted service charge for year ended 31.12.14	£473.53		£2,707.14
24.06.15	Ground rent	£25.00		£2,682.14
25.12.15	Ground rent	£25.00		£2,657.14
30.12.15	Cheque payment from Ms May		£601.84	£3,258.98
	Adjusted service charge for year ended 31.12.15	£516.14		£2,742.84
24.06.16	Ground rent	£25.00		£2,717.84
25.12.16	Ground rent	£25.00		£2,692.84
	Adjusted service charge for year ended 31.12.16	£383.90		£2,308.94
13.01.17	Cheque payment from Ms May		£556.70	£2,865.64
24.06.17	Ground rent	£25.00		£2,840.64
				£2,840.64
				£2,840.64
				<b>£2,840.64</b>

FLAT 2, 80 FARLEY ROAD, LONDON SE6 2AR				
ADJUSTED GROUND RENT AND SERVICE CHARGE STATEMENT				
DATE	DESCRIPTION	DEBIT	CREDIT	BALANCE
27.01.11	Adjusted opening balance	£1,843.70		-£1,843.70
	Adjusted service charge for year ended 31.12.10	£396.95		-£2,240.65
24.06.11	Ground rent	£25.00		-£2,265.65
25.12.11	Ground rent	£25.00		-£2,290.65
	Adjusted service charge for year ended 31.12.11	£406.57		-£2,697.22
24.06.12	Ground rent	£25.00		-£2,722.22
25.12.12	Ground rent	£25.00		-£2,747.22
	Adjusted service charge for year ended 31.12.12	£414.91		-£3,162.13
24.06.13	Ground rent	£25.00		-£3,187.13
25.12.13	Ground rent	£25.00		-£3,212.13
	Adjusted service charge for year ended 31.12.13	£434.82		-£3,646.95
24.06.14	Ground rent	£25.00		-£3,671.95
25.12.14	Ground rent	£25.00		-£3,696.95
	Adjusted service charge for year ended 31.12.14	£473.53		-£4,170.48
24.06.15	Ground rent	£25.00		-£4,195.48
25.12.15	Ground rent	£25.00		-£4,220.48
	Adjusted service charge for year ended 31.12.15	£516.14		-£4,736.62
24.06.16	Ground rent	£25.00		-£4,761.62
25.12.16	Ground rent	£25.00		-£4,786.62
	Adjusted service charge for year ended 31.12.16	£383.90		-£5,170.52
24.06.17	Ground rent	£25.00		-£5,195.52
				-£5,195.52
				-£5,195.52
				<b>-£5,195.52</b>