FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/23UE/LAM/2018/0006** **CHI/23UE/LSC/2018/0077**
Property	**:**	**County Chambers Station Road Gloucester GL1 1DH**
Applicant	**:**	**Dr Graham Davies**
Respondent	**:**	**KG Investments Ltd.**
Representative	**:**	**Dr Kingsley Osayi**
Type of Application	**:**	**Landlord and Tenant Act 1987, Section 24** **Landlord and Tenant Act 1985, Section 27A** **Landlord and Tenant Act 1985, Section 20C** **Commonhold and Leasehold Reform Act 2002, paragraph 5A of Schedule 11**
Tribunal Members	**:**	**Judge M Davey** **Mrs JE Coupe FRICS** **Mrs J Playfair**
Date of hearing	**:**	**7 November 2018**
Date of Decision with reasons	**:**	**20 November 2018**

DECISION

Landlord and Tenant Act 1985

Section 27 A

The Tribunal's determinations with regard to the payability and reasonableness of the service charge for the years 2016 to 2018 are set out in the Reasons given below,

Landlord and Tenant Act 1987

In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Ian Sainsbury of CMG Leasehold Management, 134, Cheltenham Road, Gloucester GL2 0LY ("the Manager") is appointed as manager of the building known as County Chambers, Station Road, Gloucester GL1 1DH ("the Building").

Section 20C Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

The Tribunal orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act that none of the costs incurred by the Landlord in connection with these proceedings shall be treated as relevant costs for the purpose of any future service charge or administration charge demand.

The Tribunal orders under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the Applicant fees paid to the tribunal in respect of the Applications.

REASONS

The Applications

1. By an application dated 4 June 2018, Dr Graham Mark Davies ("the Applicant/Tenant"), being the leaseholder of premises ("the Property") at County Chambers, Station Road, Gloucester GL1 1DH ("the Building") applied to the First-tier Tribunal (Property Chamber) ("the Tribunal"),

under section 24 of the Landlord and Tenant Act 1987 for the appointment of a Manager of the Property ("the AOM Application"). By a further application dated 03 August 2018 the Applicant applied to the Tribunal, under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), for a determination as to the payability and reasonableness of service charges under his lease of the Property in respect of the period from 30 September 2016 to 2018 ("the Section 27A Application"). The Applicant also seeks an Order under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether administration charges are payable by him to the Landlord. The Applicant (by applications dated 4 June and 03 August 2018) further seeks orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the 2002 Act preventing the Landlord from recovering the whole or part of the costs of these proceedings by way of a future service charge or administration charge demand.

2. The Respondent to the Applications is KG Investments Ltd. ("the Landlord") the freeholder landlord of the Building of which the Property forms a part. A procedural chair, Mr D. Banfield FRICS, issued Directions in respect of the AOM Application and a case management hearing was held on 4 July 2018 following which further Directions were issued on 4 and 10 July and 14 August 2018. Mr Banfield issued Directions on 14 August 2018 with regard to the Section 27A Application and directed that both Applications would be heard together.

The subject property

3. The Building, a brick and stone-faced property in the centre of Gloucester, was constructed in 1895. It has been converted to two retail units on the ground floor and nine residential studio units on the first and second floors. The Applicant's lease ("the Lease") is dated 30 September 2016 and relates to the first and second floors and front door hallway and stairs of the Building ("the Property"). The Respondent granted the Lease to the Applicant for a term of 999 years in consideration of a premium of £1 and an annual rent of £400 increasing by £200 on the 25th anniversary of the date of the lease and every 25th anniversary thereafter. Although the Tribunal was not shown any further title documentation, the parties told us that, in 2015, Dr Davies acquired by purchase the residue of an earlier 999 year lease of the Property. He then by licence converted the first and second floors of the Building into 9 modern bedsitting units, following which his lease was replaced by the Lease of 30 September 2016 under which he now holds the Property. He lets each of the 9 units on Assured Shorthold Tenancies under the Housing Act 1988. The two retail units are owned by the freeholder Respondent and are the subject of business tenancies or licences granted by the Respondent. Unit 1 is has been let but is empty pending refitting and and Unit 2 is used as a barber's shop.

4. The two commercial Units, each with its own front door, are on either side of a separate entrance to the Building. Unit 1 to the left has been

recently let for use as a tattooist shop and Unit 2 to the right is let and used as a barber's shop. Access to the Property, which is the subject of the Applicant's Lease, is by the central entrance door beyond which are the hall and stairs to the two upper floors. At the rear of the hall (and included in the Property) there is a small area, which contains communal laundry facilities for the use of the occupants of the residential units. Beyond that area is a rear yard and Refuse Area (which are owned by the Respondent).

5. The Tribunal considered the Applications on 07 November 2018 following its inspection of the Building and consolidated Hearing on the same day. Both parties had previously made written submissions. The inspection was attended by the following:

Dr Graham Davies (the Applicant),
Dr Kingsley Osayi Ms Georgie Smyth (Directors of the Respondent, K.G.Investments Ltd.),
Ms. Rachel Macdonald (Tenant of Unit 1)
Mr Ian Sainsbury (the Applicant's proposed Manager).

All of the attendees, save Ms Macdonald, attended the Hearing, together with Mr Pencho Penev (the Applicant's builder).

6. The Tribunal inspected, on the ground floor, the entrance hall, rear laundry rooms, and the rear yard area, where scaffolding had been erected against the rear of the Building. Mrs Coupe also viewed from a ladder the gutter and downpipes at the rear of the property. On the first and second floors the Tribunal inspected internally studios 1, 3 and 7. The Tribunal was also shown the shop unit 1 where there was evidence of water ingress that is said to have occurred during heavy rain on the previous weekend. A considerable number of polystyrene ceiling tiles had collapsed and the floor was wet. The Tenant of unit 2 also reported that there had been water ingress to his shop unit.

The Section 27A Application

7. The issues identified by the Tribunal in the Directions of 14 August 2018 as having been raised by the section 27A Application and to be determined by the Tribunal were:

8. **2016-2017**

- Insurance costs (£776.09).

2017-2018

- Insurance 6 October 2017 to 6 October 2018 (£817)
- Insurance 11 June 2018 to 19 May 2019 (£1988.37)

- Service Charges (£5961.60)
- Unknown (damages from blocked drain)
- Unknown (damages from blocked gutter)
- Unknown (surveys for Landlord's finance company)

In making its decision the Tribunal to consider

Whether the works are within the Landlord's obligations under the Lease

- Whether the costs are payable by reason of section 20B of the 1985 Act
- Whether the Landlord has complied with the consultation requirements under section 20 of the 1985 Act
- Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee
- Whether any insurance premium demanded is net of any commission paid to the Landlord in accordance with Clause 1.1(a) of the Lease
- Whether an Order should be made under section 20C of the 1985 Act.
- Whether an order for reimbursement of the application/hearing fees should be made.

The Lease

9. Clause 5 of the Lease obliges the Tenant to observe and perform the covenants set out in Schedule 4 to the Lease. Paragraph 2 of that Schedule obliges the Tenant "To pay to the Landlord the Service Charge demanded by the Landlord under paragraph 4 of Schedule 6 by the date specified in the Landlord's notice." Paragraph 3.1 of Schedule 4 to the Lease obliges the Tenant to pay to the Landlord "(a) the Insurance rent demanded by the Landlord under paragraph 2 of Schedule 6 by the date specified in the Landlord's notice……."

10. Clause 1.1 of the Lease defines

"Commercial Premises" as: "the premises on the ground floor of the Building from time to time."

"Common Parts" as: "the parts of the Building edged blue on Plan 1 and that are not part of the Property or the Commercial Premises and which are intended to be used by the tenants and occupiers of the Building and separately the rear yard and Refuse Area of the Building and

(a) the external paths, driveways, yard and Refuse Area at the Building."

"Insurance Rent" as:

(a) "the Tenant's Proportion of the cost of any premiums (including any IPT) that the Landlord expends (after any discount or commission is allowed or paid to the Landlord) and any fees and other expenses that the Landlord reasonably incurs, in effecting and maintaining insurance of the Building in accordance with its obligations in paragraph 2 of schedule 6 including any professional fees carrying out any insurance valuation of the Reinstatement Value;

(b) the cost of any additional premiums (including any IPT) and loadings that may be demanded by the Landlord's insurer as a result of any act or default of the Tenant any undertenant, their workers, contractors, or agents or any person at the Property with the express or implied authority of any of them."

"Insured Risks" as:

"Fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from, impact by vehicles, riot, civil commotion, malicious damage, theft or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, public liability to anyone else and any other risks which the Landlord decides to insure against from time to time and Insured Risk means any one of the insured risks."

"Retained Parts" as "all parts of the building other than The Property and the Commercial Premises including

(a) the main structure of the Building including the roof and roof structures, the foundations, the external walls and internal load-bearing walls, the structural timbers, the joists and the guttering;
(b) all parts of the Building lying below the floor surfaces or above the ceilings;
(c) all external decorative surfaces of the Building but not the doors, door frames and window frames whether external or internal;
(d) the Common Parts;
(e) the Loft Space;
(f) the Service Media at the Building which do not exclusively serve either the Property or the Commercial Premises; and
(g) all boundary walls fences and railings of the Building."

"Service Charge" as "The Tenant's Proportion of the Service Costs"

"Service Costs" as "the total of

(a) all of the costs properly incurred or to be incurred and estimated by the Landlord of:

(i) providing the Services; and
(ii) complying with all laws relating to the Retained Parts

(b) the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the Services; and

(c) all rates, taxes and impositions payable in respect of the Common Parts, their use and any works carried out on them (other than any taxes payable by the Landlord in connection with any dealing with or disposition of its reversionary interest in the Building."

"Services" as

(a) "cleaning and maintaining, decorating, repairing and renewing or replacing the Retained Parts;
(b) cleaning and maintaining the Common Parts and Refuse Area
(c) cleaning the outside of the windows of the Building
(d) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building."

"The Tenant's Proportion" as: "84% or such other percentage as the Landlord may notify the Tenant from time to time."

11. By paragraph 2 of Schedule 6 to the Lease the Landlord covenants

2.1 to effect and maintain Insurance of the Building against loss or damage caused by any of the Insured Risks with reputable insurers, on fair and reasonable terms that represent value for money, for an amount not less than the Reinstatement Value subject to

(a) any exclusions, limitations, conditions or excesses that may be imposed by the Landlord's insurer and
(b) insurance being available on reasonable terms in the London insurance market

2.2 To serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building (after any discount or commission but including IPT). Such notice shall state:

(a) the date by which the gross premium is payable to the Landlord's insurers and
(b) the Insurance Rent payable by the Tenant, how it has been calculated and the date by which it is payable.

2.3 In relation to any insurance effected by the Landlord under this clause, the Landlord shall

(a) at the request of the Tenant supply the Tenant with:

(i) a copy of the insurance policy and schedule; and
(ii) a copy of the receipt for the current year's premium

(b) notify the Tenant of any change in the scope, level or terms of cover as soon as reasonably practicable after the Landlord has become aware of the change:

(c) use reasonable endeavours to procure that the insurance policy contains a non-invalidation provision in favour of the Landlord in respect of any act or default of the Tenant or any other occupier of the Building and;

(d) procure that the interest of the Tenant and its mortgagees are noted on the insurance policy, either by way of a general noting of tenants' and mortgagees' interests under the conditions of insurance policy or (provided that the Landlord has been notified of any assignment to the Tenant pursuant to Paragraph 9.6 of Schedule 4) specifically.

12. By Paragraph 4 of Schedule 6 to the Lease the Landlord covenants

4.1 Subject to the Tenant paying the Service Charge to provide the Services
4.2 to serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs.
4.3 to keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant, on giving reasonable notice, to inspect the accounts, records and receipts.

The disputed charges – the Applicant's case

Service charge

13. On 3 February 2018 Dr Osayi wrote to Dr Davies in the following terms. That the Lease made provision for a service charge in respect of the Building and that these monies when received by the Landlord would be paid into a separate account. This account would be reconciled on 30 September each year and a statement of the account would be sent to the Tenant annually. At the time of every annual reconciliation any amount in excess of £1500 would be refunded to the Tenant or carried over to the following year. The service charge fund would be used to maintain the main structure of the Building including cleaning, cleaning the outside of the windows, repairing and renewing or replacing items in the Retained Parts, clearing the gutters, maintaining the loft space and any other issues that may arise relating to the Common Parts of the Building. Dr Osayi further stated that Dr Davies owed by way of service charge an amount of £4,968 plus VAT (i.e. £5,961.60) in respect of the period from 30 September 2016 to 31 March 2018. This demand was reiterated in a further letter dated 11 March 2018 from Dr Osayi to Dr Davies. On 23 March 2018 Dr Osayi wrote to Dr Davies stating that if by 30 March 2018 Dr Davies did not make full payment of the sums demanded the Landlord would take court proceedings for their recovery. Dr Davies disputes the payability and reasonableness of the sums demanded.

14. Dr Davies submits that since he took his Lease the Landlord has provided no services to the Building. Indeed Dr Davies says that he paid for a fire alarm inspection and a professional clean of the Common Parts of the Building. After he completed the development Dr Davies wrote to Dr Osayi on 30 March 2016 and 13 April 2016 in order to set up appropriate service charge arrangements but this did not produce any response. Dr Davies also submits that the service charge demands he has received were not accompanied by a formal summary of the Tenant's rights and obligations. He further states that the arrangement with regard to the creation and operation of a service charge fund proposed by Dr Osayi in his letters of 3 February and 11 March 2018 was not consistent with the service charge provisions of the Lease. In any event Dr Davies had never received any statements or reconciliations from the Landlord.

The survey costs

15. On 30 March 2017 Dr Osayi wrote to Dr Davies stating that his lender, Santander, had recommended that he look at the fire risks of all his properties. He indicated that this would cost £680 in respect of the Building and he would be proposing that Dr Davies pay this sum. On 5 November 2017 Dr Osayi wrote to Dr Davies stating that he had been advised to carry out a structural survey of the Building and that Dr Davies would be responsible for his share of the cost of this survey. On 19

November 2017 Dr Osayi wrote to Dr Davies stating that the survey had been required by Santander. On 9 June 2018 Dr Osayi wrote to Dr Davies stating that Santander had required a fire safety inspection for all of the Landlord's properties together with an asbestos survey for those properties.

16. Dr Davies disputes that he is liable for any of these costs. He submits that they are finance costs and that the Lease does not make provision for recovery of such costs from the Tenant. Furthermore, Dr Davies had commissioned a fire risk assessment at another property in Gloucester which he owns and which also contains nine studio units. He says that this was carried out at a cost of £210 inclusive of VAT. He therefore failed to understand why the cost of £680 had been benchmarked at County Chambers.

Insurance

17. On 25 October 2016 Dr Osayi wrote to Dr Davies providing the cost of the insurance of the Building (£1124.77) and the documentation relating to a policy covering the period 6 October 2016 to 6 October 2017 ("Policy 1"). However, he gave no indication of the Insurance Rent payable under the Lease nor how it was being calculated or the date on which it was payable. He simply stated, "Your share as discussed earlier will be per rota in relation to the square footage from Mr Marshall." Dr Davies wrote to Dr Osayi on 26 October 2016 pointing out errors in the documentation. Despite many reminders sent from Dr Davies to Doctor Osayi it was not until 19 January 2017 that Dr Osayi wrote to the insurance company giving permission to discuss the error with Dr Davies to enable it to be corrected. The error was then duly corrected.

18. On 3 October 2017 Dr Davies wrote to Dr Osayi asking for confirmation that the insurance for the coming year had been renewed. On 10 October 2017 Dr Osayi forwarded the insurance documentation to Dr Davies ("Policy 2"). The premium payable was £1184. Once again there was no indication of the Insurance Rent payable under the Lease or how it was being calculated or the date on which it was payable. Dr Davies was not noted on this policy. By a letter to Dr Osayi dated 11 October 2017 Dr Davies raised a number of queries which he asked to be resolved and stated that "I will arrange for my contribution towards the insurance to be paid in the next few days and confirm when that has been done." In fact payment was not made until 10 January 2018 when Dr Davies wrote to Dr Osayi stating that he had paid his contribution of £817 (£1184 x 0.69). Nevertheless, Dr Davies continued to have concerns with regard to the insurance cover and he raised those concerns in a series of letters to Dr Osayi dated 13 and 14 February, 28 March and 27 April 2018.

19. On 14 February 2018, Dr Osayi wrote to Dr Davies stating that he was not happy with the current insurance company and that he was looking at upgrading the policy with another provider. He stated that the current insurance policy would remain in place until the change was made. On 9

June 2018 Dr Osayi forwarded to Dr Davies new insurance documentation ("Policy 3"). On 11 June 2018 Dr Davies wrote to Dr Osayi pointing out a number of concerns, including the fact that the claims history seemed not to have been disclosed and that he had not been noted on the policy. On 11 June 2018 Doctor Osayi's broker Mr Martyn Smith, of Titan Insurance, provided Dr Davies with updated documents with Dr Davies noted on the policy. This policy was to cover the period from 11 June 2018 to 19 May 2019. The Certificate Schedule states that the reason for issue was "Change to Interested Party". On the same day Dr Davies had a telephone conversation with Mr Smith. This revealed that Mr Smith was unaware of any claim at the property or that it had been refused. He was under the impression that the ASTs at the property were between the Landlord and the under-tenants. Dr Davies says that the fact that the under-tenancies were between Dr Davies and the under-tenants may have meant that the policy was invalid. Mr Smith was also unaware that the tenant mix should include students and housing association tenants and that if any such tenants were living at the property the policy may be invalid. In fact Dr Davies was able to ascertain that all the under-tenants at the property were currently professionals or self-employed. However, despite subsequent correspondence between Dr Davies and Doctor Osayi, Dr Davies says that many of the errors in the insurance documentation remained unaddressed by 22 June 2018.

20. The sums in question with regard to the insurance are £776.09 (Policy 1); £817 (Policy 2); £1,988.37 (Policy 3). Dr Davies seeks determinations from the Tribunal as to (1) whether Policies 1 and 2 were consistent with the requirements of the Lease (2) whether Policy 3 should have been placed (3) whether Policy 3 provides value for money given the significant increase in cost and (4) whether the Landlord has complied with the requirements of the Lease to serve notices on the Tenant with regard to insurance. He asks that if the Tribunal finds in his favour it order repayment to him of any sums paid in respect of insurance and to order that any sums demanded be irrecoverable.

Two risk events

21. Dr Davies also raises the matter of two damage events to the Building. The first involved the escape or overflow of water from sewage pipes within the building resulting from a blocked drain in the courtyard ("the blocked drain event"). The second involved the escape or overflow of water from a blocked gutter and downpipe running within the building ("the blocked gutter event"). Dr Davies believes that the blocked drain event occurred on 21 August 2017. His builder and handyman, Mr Penev, dealt with the blockage, which was attributable to a tight bend in the secondary sewer that has now been rectified. On 2 October 2017 Dr Osayi telephoned Dr Davies and told him that water ingress had damaged the empty and derelict retail Unit 2. On 8 October 2017 Dr Osayi wrote to Dr Davies and stated that the damage was not covered by the Building insurance. Over the following months Dr Osayi asserted that Dr Davies should have insured against damage to the rest of the

Building caused by water ingress from the Property. Dr Osayi insisted that the water had entered the retail unit as a result of a broken pipe, blocked drainage or deliberate action by one of the under-tenants of the residential units. Dr Osayi said that the insurance policy did not cover the loss because of the retail unit being vacant at the time. He said that his solicitor had advised him that if the Landlord did not make an insurance claim, Dr Davies would be responsible for 84% of the cost of the repairs.

22. Dr Davies said that he had already paid £120 to unblock the drain. He asserts that the cost of making good the ceiling in the empty shop unit 2 and the clearing up of the floor below would be no more than £200 and denies that there was more extensive damage to the roof walls and floors of the retail unit as alleged by Dr Osayi. He therefore submits that the reasonable cost of effecting the necessary repairs would be no more than £320 (of which he has already paid £120).

23. Dr Davies said that the blocked gutter event occurred over the weekend commencing 1 June 2018. It affected studios 2,3 and 7. The gutter was blocked by a bird's nest and associated debris. It was cleared on 2-4 June 2018 by Dr Davies's builder. On 7 June 2018 Dr Osayi claimed that the incident had caused water ingress to the retail unit 2. In a letter to Dr Osayi dated 8 June 2018, Dr Davies refuted this suggestion and asserted that the repair and maintenance of the guttering was the Landlord's obligation under the Lease and that no such maintenance or repair had taken place since Dr Davies acquired his interest in the Property in late 2015. No insurance claim was made in respect of damage arising from this event. Dr Davies said that any increase in insurance premiums resulting from refused claims should not be reflected in Insurance Rent payable by the Tenant. Indeed Dr Davies contends that the Landlord is liable to him for his loss and that a fair and reasonable estimate of his loss would be £2,307.79. This is calculated as follows:

Unblocking the gutter	£100
A&E Fire Security callout	£129.17
A&E FS replace fittings	£381.82
A void caused by flood	£1,091.80
To repair damage to units And common parts	£650 (estimate)

The disputed charges – the Respondent's case

Service Charge

24. Dr Osayi states that he has not received any service charge payments from the Tenant since the Lease commenced. He says that the Lease fixes the Tenant's proportion at 84% and the Tribunal has no power to vary this amount. He says he does not accept that he has failed to provide services in accordance with the Lease.

25. At the start of the hearing Dr Osayi produced for the first time a document dated 23 October 2018. It consisted of an invoice from a company called Easy Window Cleaning of Stonehouse, Gloucestershire, in respect of rubbish removal, window cleaning, gutter clearance and gutter repair for the Building. The invoice referred to a schedule of works to take place from 25 – 28 October 2018 and was for a total sum of £2,580. Dr Osayi said that repair and replacement of roof tiles was pending at an estimated cost of £500. Dr Osayi deduced from these sums that an amount of £2,500-£4000 per annum would need to be spent on Services. By a statement to which the invoice was attached Dr Dr Osayi said that the service charge was

"8.6%, Ground floor retail unit 1 (Tattoo shop): £350 + vat per annum (£29.17 + vat per month)

7.4%, Ground floor retail unit 2 (Station Barbers) £300 + vat per annum (£25 + vat per month)

84% Graham (Upper floor 9 flats): £3,412.5 + vat per annum (£284.37 + vat per month)."

The Survey costs

26. Dr Osayi said that his former lender Santander had required an Asbestos and Fire Safety Survey, which was not carried out by Peninsula Business Services Ltd despite the Landlord having signed a contract for the same with that company on 20 March 2017. The cost of £1,300 plus VAT covered two of the Landlord's properties and therefore he had apportioned the cost equally, producing a sum of £650 in respect of the Building, 84% of which amounted to £546 plus VAT. As to the structural survey that he had proposed he said that he did not require any contribution from the Applicant, unless he sought a copy of the report. The purpose of the survey was to satisfy the landlord that the Building was structurally sound and to properly identify the cause of water ingress.

The damage events

27. Dr Osayi submits that the cost of damage caused by water ingress to the Property and the commercial unit should be borne by each party. He asserted that the last water ingress would not have occurred if the Applicant had paid the service charge.

Insurance

28. Dr Osayi's submission with regard to insurance relates solely to Policy 3, which commenced in July 2018. He says that the vacancy in commercial Unit 1 caused the increase in premium to the Building insurance. Dr Osayi states that the Applicant is noted on the policy about

which he was consulted. At the hearing Dr Osayi produced a letter from the insurers confirming that as from 5 November 2018 the premium would actually be £1180.32 on the basis that there was now a tenancy of Unit 1. This takes effect as a new policy from 5 November 2018 to 5 November 2019.

Consideration

Service charge demands

29. This case involves a dispute that has arisen between two investors in three storey premises known as County Chambers, Station Road, Gloucester ("the Building"). One is the Respondent freeholder Landlord, who owns the Retained Parts (principally the structure and exterior of the Building) and two commercial units in the Building, and the other is the Applicant Tenant, who has a long lease ("the Lease") of the ground floor (part) and the upper floors ("the Property"), which contain 9 studio units let on Assured Shorthold Tenancies. The value of their respective investments depends on the observance by both Landlord and Tenant of their respective covenants under the Lease, with particular reference to insurance and the service charge provisions, including those relating to the management of the Building.

30. Sadly, in many ways this has not happened. Although the Landlord is a limited company it operates through its Director Dr Kingsley Osayi who believes that he is able to determine a monthly sum to be payable by the Tenant by way of service charge. He reasons that this would provide him with funds to spend on providing the Services that he is obliged to provide under the Lease. Negotiations between Landlord and Tenant to set up a viable service charge arrangement at the beginning of the Lease or shortly thereafter came to nought. Eventually, by letters dated 3 February, 11 March and 23 March 2018 Dr Osayi demanded payment by Dr Davies of service charge sums amounting to £4,968 plus VAT (i.e. £5,961.60) in respect of the period from 30 September 2016 to 31 March 2018. However, as Dr Davies has rightly submitted, Dr Osayi is unable to point to any provisions in the Lease that justify his demands.

31. Clause 5 of the Lease obliges the Tenant to observe and perform the covenants set out in Schedule 4 to the Lease. Paragraph 2 of that Schedule obliges the Tenant "To pay to the Landlord the Service Charge demanded by the Landlord under paragraph 4 of Schedule 6 by the date specified in the Landlord's notice." Paragraph 4.2 of Schedule 6 requires the Landlord to serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs. Paragraph 4.3 obliges the Landlord to keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant, on giving reasonable notice, to inspect the accounts, records and receipts.

32. The demands made in February and March 2018 do not meet these requirements. There is no reference to costs incurred or to be incurred and the Landlord has disclosed no accounts, records or receipts relating to costs allegedly incurred. Furthermore, the demand was not accompanied by the summary of rights and obligations required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. In these circumstances the Tribunal finds that it has not been established that any Services have been provided, or costs incurred or expected at the time of the demand to be incurred by the Landlord and therefore the sums demanded are neither payable nor reasonable.

Survey charges

33. The Tribunal considers that quite irrespective of whether the Landlord's then lender Santander required the Landlord to carry out a Fire and Asbestos Survey, there are statutory obligations on the Landlord to carry out the same. However, the Tenant can only be required to contribute to the cost if the Lease so provides. It is common for leases to place an obligation on the landlord to comply with any statutory requirements and to recover the cost from the tenant by way of service charge. In the present case there is no such express provision in the Lease. However, the definition of Services in the Lease extends to "(d) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building." It is clearly in the interest of good estate management to carry out a fire and asbestos survey. On balance the Tribunal finds that such a survey would fall within paragraph (d) and the reasonable costs of the same, when incurred, would fall within the Service Charge. The Tribunal also finds that the obligation on the Landlord to maintain the Retained Parts would include the carrying out at reasonable cost of any necessary survey to assess the existing state of repair.

34. However, with regard to the Landlord's proposed structural survey, Dr Osayi has confirmed that the Landlord does not require any financial contribution from the Applicant and the Tribunal has accordingly not made any determination with regard to such costs.

<u>Insurance</u>

35. At the hearing Dr Davies said that he did not wish to pursue the matter of the amount of the insurance premiums. Indeed he has not produced evidence of alternative quotes for insurance of the Building. His primary concern is to ensure that the current insurance is appropriate to cover the relevant risks in respect of the Building. The Tribunal does not therefore make a determination with regard to the payability of or reasonableness of the sums demanded and paid in respect of Policies 1 and 2. Dr Davies paid his agreed share of the premiums under both of

these policies albeit that he had numerous queries as to the extent of the cover that were not fully resolved to his satisfaction. With regard to Policy 3 this was taken out to over the period 11 June 2018 to 19 May 2019. What is unclear is whether the previous insurance has been cancelled. On 11 June 2018 Dr Davies raised a number of other issues with Dr Osayi and the broker Martyn Smith of Titan Insurance with regard to the new insurance and these were only finally resolved save for one matter on 21 June 2018. The unresolved matter was the important one of whether there had been accurate disclosure to the insurer of the date when a claim with regard to the blocked drain flooding had had been refused under the previous policy.

36. The Tribunal agrees with Dr Davies that his concerns with regard to the matter of insurance of the Building were and are serious and genuine. The Lease requires the Landlord to insure the Building (as defined in the Lease) and for the Tenant's interest to be noted on the policy. It also requires the Landlord to serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building (after any discount or commission but including IPT). The notice must state: (a) the date by which the gross premium is payable to the Landlord's insurers and (b) the Insurance Rent payable by the Tenant, how it has been calculated and the date by which it is payable. We are told that the premium is now £1180.32 although it is not clear whether this excludes any commission paid to the Landlord.

37. The Tribunal determines that no sum will be payable by way of Insurance Rent in respect of the current insurance policy until the Landlord gives notice in due form under the Lease of the sum demanded and is able to confirm that the Building is insured in accordance with the terms of the Lease. The Tribunal also finds that the due Proportion payable by the Tenant is 84% unless the Landlord has notified some other proportion. At the hearing the Tribunal was told by Dr Davies that the parties had agreed, on the basis of a report from an architect, a Mr Marshall, that the Insurance Rent and service charges were to be calculated on the basis of square footage of the Property as a proportion of the whole Building. This factor came to 0.69 the remainder being attributable to the Landlord in respect of the Commercial Property. The Tribunal further determines that proportionate credit should be given to the Tenant for any refund made to the Landlord following earlier cancellation of the previous policy.

The two damage events

38. The Tribunal determines that the terms of the Lease are clear in so far as it is the responsibility of the Landlord to insure the Building as defined in the Lease. This includes the Commercial Premises, the Common Parts, the Retained Parts and the Property. Contrary to the Landlord's belief, there is no obligation on the Tenant to effect separate insurance of the

Property. Indeed the Tenant has covenanted "Not to insure the Building or the Property against any of the Insured Risks in such a manner as would permit the Landlord's insurer to cancel the Landlord's insurance or to reduce the amount of any money payable to the Landlord in respect of any insurance claim." Escape of water is an Insured Risk.

39. The Landlord Covenants, set out in Schedule 6 to the Lease, do not contain any express repairing obligation with regard to the Retained Parts. However, paragraph 4 of that Schedule obliges the Landlord to provide the Services. The Services include "cleaning and maintaining, decorating, repairing and renewing or replacing the Retained Parts." The Retained Parts are defined in so far as relevant as (a) "all parts of the Building other than the Property and the Commercial Premises including the main structure of the Building including the roof and roof structures, the foundations, the external walls and internal load-bearing walls, the structural timbers, the joists and the guttering: (b) all parts of the Building lying below the floor surfaces or above the ceilings all external decorative surfaces of the Building." It follows that the only repairs carried out by the Landlord the costs of which can be recovered by the Service Charge are repairs to the Retained Parts. These do not include the Commercial Premises. However, under paragraph 5.1 of Schedule 6 the Landlord covenants that

    "until such time as the Landlord grants leases of the Commercial Premises to maintain and repair the Commercial Premises to the extent that no physical damage is caused to the Property. For the avoidance of doubt, this covenant will automatically lapse once a lease of the Commercial Premises has been granted or a tenant has entered into possession or occupation of the Commercial Premises, provided that the Landlord shall then use reasonable endeavours to enforce the repairing obligations in such a lease or leases of the Commercial Premises."

40. The Tenant's obligations as to repair are set out in paragraph 10 of Schedule 4 to the Lease which contains a covenant "to keep the Property in good repair and condition throughout the Term provided that the Tenant shall not be liable to repair the Property to the extent that any disrepair has been caused by an Insured Risk and unless and to the extent that the policy of insurance of the Property (sic) has been vitiated or any insurance proceeds withheld in consequence of any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents of any person at the Property with the express or implied authority of any of them."

41. It follows that it is the Landlord's obligation to promptly make a claim under the insurance policy for the Building if any part of the Building is damaged or destroyed by an Insured Risk and to use the insurance monies to repair the damage. Thus if the flooding to the Commercial Unit 2 was caused by the defective drain and this was an Insurance Risk the Landlord should make a claim. If the damage is excluded by the

insurance policy the Landlord would need to look to the terms of the Lease if he seeks to make the Tenant liable.

42. With regard to any water damage to the Commercial Unit 2 caused by the blocked gutter the Landlord would need to claim on the insurance. If the Tenant wishes to recover the cost incurred in repairing and remedying damage attributable to blocked gutters this would again be a matter of enforcing the Landlord's covenant to repair the Retained Parts.

The Appointment of Manager Application.

43. The Applicant, by way of an application to the Tribunal under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") seeks the appointment of Mr Ian Sainsbury of CMG Leasehold Management, 134, Cheltenham Road, Gloucester GL2 0LY as manager of the Building. The Applicant has served a valid preliminary notice on the Landlord under section 22 of the 1987 Act.

44. With regard to the present case, the relevant circumstance in which an order can be made are where the Tribunal is satisfied that (1) that the Landlord either is in breach of any obligation owed by him to the Tenant under his tenancy and relating to the management of the premises in question or any part of them or (2) that unreasonable service charges have been made, or are proposed or likely to be made or (3) that unreasonable variable administration charges have been made, or are proposed or likely to be made or (4) that the Landlord has failed to comply with any relevant provision of a Code of Practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), or (5) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made. In cases (1) to (4) above there is also the additional requirement that it is just and convenient to make the order in all the circumstances of the case

45. The Applicant relies principally on two grounds. The first relates to the insurance of the Building and the second relates to the operation of the service charge. The Applicant submits that a reasonable landlord would have been able to satisfactorily demonstrate that the required buildings insurance was in place, that he had complied with the covenants of the Lease in terms of the buildings insurance and explain why any insurance claim had been rejected.

46. The Applicant also submits that any reasonable landlord would ensure that services are provided for their property, maintain accounts and receipts and be able to make these available to their tenants as required by the lease. He says that it was not reasonable for the Landlord to backdate services charges for services that were simply not provided. No service charge accounts or any formal demands for payments have been provided. The Applicant believes that the

working relationship between himself and the Landlord has broken down and that the current situation cannot be resolved other than by the appointment of a manager by the Tribunal. The Applicant says that he sought to put into place a workable service charge regime with the Landlord at the beginning of the Lease but this did not happen because of intransigence or inaction on the part of the Landlord. The Applicant also submits that the Landlord has exaggerated the extent of the damage from the blocked drain events this being inconsistent with information given by him on reporting the matter to the insurance company when reinsuring the property in June 2018. The Applicant also says that the Landlord has behaved unreasonably in refusing to provide satisfactory answers to reasonable questions with regard to the nature and extent of insurance cover.

47. The Applicant produced extensive correspondence with the Landlord, which evidenced his willingness to resolve the outstanding issues with regard to the management of the Building and the services by agreement, without the need to resort to the remedy of appointment of a manager or an application to the Tribunal. The Landlord did not take up these offers. More specifically the Landlord has rejected offers by the Tenant to seek mediation. This is a case where the business relationship between the parties began on amicable terms but that foundation has been gradually eroded to the point where the relationship has more or less broken down.

48. The Tribunal finds that in these circumstances the Applicant has made out a ground, under section 24(2)(a) (ab) (ac) and (b) of the 1987 Act for the appointment of a manager of the Building and that it is just and convenient to make the Order. The Landlord Company has not managed the Building in accordance with the terms of the Lease. It demanded backdated service charges without producing any evidence of expenditure or planned expenditure on relevant services under the Lease. It also failed to demand Insurance Rent in accordance with the terms of the Lease or demonstrate that a claim had been made and/or rejected in respect of a Risk Event. The Applicant Tenant has made numerous attempts from the beginning of his Lease to put the operation of the service charge provisions of the Lease on a satisfactory footing but the Landlord has not responded in any meaningful way to those overtures or accepted offers by the Tenant to settle the matter without the need to resort to the Tribunal. Furthermore, at the hearing, Dr Osayi agreed that a manager should be appointed. However, he opposed the appointment of Mr Sainsbury on the ground that his proposed management fee was too high. Dr Osayi did not propose a suitable alternative manager.

49. As noted above Dr Osayi produced a planned maintenance programme at the eleventh hour on the day of the hearing having engaged a window cleaning company to provide not only window cleaning services but also to repair and maintain the guttering. This was the first indication of any expenditure or proposed expenditure on services by the Landlord. However, not only was this document not part of the

hearing bundle (the Directions having stipulated that all documents to be relied on should be included in that bundle) it also revealed that works had been commissioned without regard to the consultation requirements in section 20 of the 1985 Act. It also reiterated the Landlord's insistence on payment of a monthly service charge contrary to the terms of the Lease. This only strengthens the case for appointment of a manager.

50. At the hearing the Tribunal questioned Mr Sainsbury as to his qualifications; his willingness to act and the terms on which he would manage the Building were he to be appointed. The Tribunal was satisfied from his answers that it would be appropriate to appoint Mr Sainsbury as manager. The proposed management fee was £2200 per annum calendar plus VAT and an initial setting up fee of £220 plus VAT. Mr Sainsbury indicated that this was at the top end of his fee range for managing this type of Building. However he explained that there would be more work involved in the first year. The Tribunal considers the proposed fee to be fair and reasonable and consistent with what a reasonable landlord might expect to be charged by a manager for managing the Building. It is to be fixed for the term of the appointment. The Order is set out in Annex 1 to these Reasons. The Tribunal has framed the Order so as to permit a proper scheme of management to be put into operation and to that extent its power so to order is not constrained by the terms of the Lease.

The Section 20C and paragraph 5A Schedule 11 Applications

51. The Applicant having been successful in respect of both Applications the Tribunal determines that Orders be made under section 20C of the Landlord and Tenant Act 1985, and paragraph 5A of Schedule 11 to the 2002 Act preventing the Landlord from recovering under the Lease any costs incurred in connection with these proceedings by way of any future service charge or administration charge demand.

The Applicant's fees

52. For the same reasons the Tribunal orders under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the Applicant fees paid to the tribunal in respect of the Applications.

Costs

53. At the end of the hearing it became clear that one or both parties was/were seeking to recover costs under Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal indicated that any such applications should be made separately to the Tribunal together with any representations, which should be copied to the other party.

Right to appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Martin Davey
Chairman of the Tribunal

Annex 1

Appointment of Manager Order

1. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Ian Sainsbury of CMG Leasehold Management, 134, Cheltenham Road, Gloucester GL2 0LY ("the Manager") is appointed as manager of the building known as County Chambers, Station Road, Gloucester GL1 1DH ("the Building").

2. The Order shall continue for a period of two years from 26 November 2018. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before the Order expires.

3. The Manager shall manage the Building in accordance with
   (a) the directions and schedule of functions and services attached to this Order;
   (b) save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Building; and
   (c) the duties of a manager set out in the Service Charge Residential Management Code ("the Code") or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993

4. The Manager shall register the Order against the Landlord's registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1 million and shall provide copies of the current cover note upon request being made by any Lessee of all or part of the Building, the Respondent or the Tribunal. (References to a Lessee in these Directions shall not include any under tenant of the units within the Applicant's lease).

2. That no later than four weeks after the date of this Order the parties to this Application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Respondent shall transfer to the Manager all the accounts, books, records and funds relating to the Service Charge and Insurance of the Building.

3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Building shall upon the date of the appointment become rights and liabilities of the Manager.

4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.

5. The Manager shall be entitled to remuneration, which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the property in accordance with the Schedule of Functions and Services attached.

6. By no later than one year from the date of appointment the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date.

7. Within 28 days of the conclusion of the management Order the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Building up to that date, to include final closing accounts. The Manager shall also serve copies of the reports and accounts on the Landlord and Lessees who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter the Manager shall reimburse any unexpended monies to the paying parties, or, if it be the case any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

(1) Maintain appropriate building insurance for the Building.
(2) Ensure that the Manager's interest is noted on the insurance policy

Service charge

(3) Prepare an annual service charge budget, and make provision for interim payment in advance, and a balancing payment by, or credit made to, the Tenant at the end of the year as appropriate;
(4) Administer the service charge.
(5) Demand and collect ground rent, service charges, Insurance Rent and any other payment due from the Tenant under the Lease.
(6) Demand and collect his own service charge which shall be payable by the Respondent Landlord as if he were a Tenant in respect of any parts of the Building which are retained by the Respondent.
(7) Notwithstanding the provisions of the Lease, the respective service charge and Insurance Rent contributions of the Respondent and the Tenant shall be apportioned on the basis of the square footage of their respective property interests in the Building as determined by the Manager;
(8) Place, supervise and administer contracts and check demands for payments of goods services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

(9) Prepare and submit to the Respondent and the Tenant an annual statement of account detailing all monies received and expended. The accounts to be certified by the external auditor if required by the Manager;

(10) Maintain efficient records and books of account, which are open to inspection by the Landlord and Tenant. Upon request, produce for inspection, receipts or other evidence of expenditure.

(11) Maintain on trust an interest bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent and all other monies arising under the Lease shall be paid.

(12) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution of Chartered Surveyors.

Maintenance

(13) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Retained Parts.

(14) The consideration of works to be carried out to the Retained Parts of the Building in the interest of good estate management and making the appropriate recommendations to the Respondent and the Tenant.

(15) The setting up of a planned maintenance program to allow for the periodic re-decoration and repair of the Retained Parts of the Building.

Fees

(16) The Manager's fee for the above-mentioned management services will be a basic fee of £2,200 per annum payable monthly in arrears plus an initial setting up fee of £220. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.

(17) If major works are carried out to the Building (where it is necessary for the Manager to issue consultation notices to the lessees, appoint builders, surveyors, architects, or other professionals and generally to administer the project) an additional fee of 6% of the cost will be payable to the Manager.

(18) VAT to be payable on all the fees quoted above were appropriate at the rate prevailing on the date of invoicing.

Annex 2: The relevant statute law

Landlord and Tenant Act 1985

Section 18(1) defines a "service charge" as:

"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."

Section 19(1) provides that:

"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".

"Relevant costs" are defined for these purposes by **section 18(2)** of the 1985 Act as "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.

Section 27A provides that

(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.

Section 20C provides that

(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 the First-tier Tribunal are not to be regarded as relevant costs to be taken into account when determining the amount of service charge payable by the tenant or any other person or persons specified in the application.

.....

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

Landlord and Tenant Act 1987

21 Tenant's right to apply to [tribunal] for appointment of manager.

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.
(2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
(3) This Part does not apply to any such premises at a time when—

(a) the interest of the landlord in the premises is held by
(i) an exempt landlord or a resident landlord, or
(ii) the Welsh Ministers in their new towns residuary capacity, or
(b) the premises are included within the functional land of any charity.

(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.
(4) An application for an order under section 24 may be made—
(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and
(b) in respect of two or more premises to which this Part applies;
and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.
(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.
(6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application

could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) For the purposes of this Part, "appropriate tribunal" means—

(a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to premises in Wales, a leasehold valuation tribunal.

22 Preliminary notice by tenant.

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

(i) the landlord, and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

(c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage,

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

23 Application to court for appointment of manager.

(1) No application for an order under section 24 shall be made to the appropriate tribunal unless—

(a) in a case where a notice has been served under section 22, either—

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by the tribunal when making the order.

(2) . . . . . .

24 Appointment of manager by tribunal.

(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver,

or both, as the tribunal thinks fit.

(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) . . . . . .

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—
(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
(ii) that it is just and convenient to make the order in all the circumstances of the case;
(ac) where the tribunal is satisfied—
(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
(ii) that it is just and convenient to make the order in all the circumstances of the case; or
(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person—
(a) on whom a notice has been served under section 22, or
(b) been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—
(a) if the amount is unreasonable having regard to the items for which it is payable,
(b) if the items for which it is payable are of an unnecessarily high standard, or
(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal**]** thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—
(a) such matters relating to the exercise by the manager of his functions under the order, and
(b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—
(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing

before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

Commonhold and Leasehold Reform Act 2002

Paragraph 5A of Schedule 11 provides that

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

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

(3) In this paragraph

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

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to these proceedings

Proceedings to which costs relate	"the relevant court or tribunal"
Court proceedings	The court before which the proceedings are taking place or, if the application is made after proceedings are concluded, the county court
First-tier Tribunal proceedings	The First–tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court