FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Chelmsford, sitting at Cambridge County Court

Tribunal reference	**:**	**CAM/22UC/LAM/2019/0010** **CAM/22UC/LIS/2020/0011**
Court claim number	**:**	**G3QZ870K**
HMCTS code (audio, video, paper)	**:**	**V:CVPREMOTE**
Property	**:**	**Congregation House, Parsonage Street, Halstead, Essex CO9 2JW**
Applicant/Defendant	**:**	**Julie Martin**
Respondent/Claimant	**:**	**Congregation House Freehold Limited**
Proceedings heard together	**:**	**(1) Application for appointment of a manager** **(2) Transferred county court proceedings**
Tribunal members	**:**	**Judge David Wyatt** **Mrs Michele Wilcox BSc MRICS**
In the county court	**:**	**Judge David Wyatt**
Date of decision	**:**	**18 November 2020**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the "**Hand Down Date**" which will be:

(a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties; or

(b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

Covid-19 pandemic: description of hearing

This has been a remote video hearing. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are in the applicant's bundle and the respondent's two bundles (all unpaginated), together with the further documents described in paragraphs 18 and 20 below, the contents of which we have noted.

Summary of the decisions made by the tribunal

1. The tribunal does not make an order for appointment of a manager.

2. The following service charges (being the balances remaining after all payments on account) are payable by Julie Martin to Congregation House Freehold Limited by a date to be confirmed following hand down:

   (i) for 2017, £875.50;

   (ii) for 2018, £1,207.27; and

   (iii) for 2019, £728.94.

3. The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

4. The reasons for these decisions are explained below.

Summary of the decisions made by the court

5. The following sums are payable by Julie Martin to Congregation House Freehold Limited by a date to be confirmed following hand down:

   (i) the court issue fee of £185; and

   (ii) interest to the date of judgment: £227.10.

6. The court makes no order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

7. The reasons for these decisions are explained below.

Background

The application for appointment of a manager

8. Ms Martin, the Applicant leaseholder of Flat 2 at the Property, applied to the tribunal seeking an order under section 24 of the Landlord and Tenant Act 1987 (the "**1987 Act**") appointing Liza Jary of East Block Management Limited as a manager of the Property.

9. The application form referred to the leaseholders of Flat 7 (Mr & Mrs Farrant) and Flat 5 (Mr & Mrs Butcher) as supporters of the application. Mrs Farrant applied to join the proceedings, but later withdrew. The application was pursued in the name of Ms Martin alone, with supporting witness statements from Mr & Mrs Farrant and Mr & Mrs Butcher.

10. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**"), for herself, Mr & Mrs Farrant and Mr & Mrs Butcher. She also applied for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

11. These applications were opposed by the Respondent landlord, Congregation House Freehold Limited.

12. In this decision, references to the **Applicant** are to Ms Martin, and references to the **Respondent** are to Congregation House Freehold Limited, in relation to the application for appointment of a manager.

The county court proceedings

13. Congregation House Freehold Limited issued the county court proceedings against Ms Martin on 12 February 2020, claiming service charges, statutory interest and costs.

14. In this decision, references to the **Claimant** are to Congregation House Freehold Limited, and references to the **Defendant** are to Ms Martin, in relation to these county court proceedings.

15. The Defendant filed a defence on 20 February 2020. The proceedings were transferred to the County Court at Chelmsford. On 30 March 2020, District Judge Foss allocated the claim to the small claims track and transferred the matter to the tribunal to be considered with the application for appointment of a manager.

Case management directions

16. The tribunal gave separate case management directions in both proceedings, arranging for them to be heard together. There was no inspection; in both proceedings, the tribunal directed that it considered an inspection was not required but photographic evidence would be admitted. Neither party requested an inspection and photographs were produced in the bundles.

17. The case management directions in the transferred county court proceedings directed that, to seek to save time, costs and resources, the judge at the substantive hearing would deal with all the issues in the proceedings, performing separately the role of tribunal judge and then the role of judge of the county court. No party objected to this. Accordingly, Judge David Wyatt presided over both parts of the hearing, sitting with Mrs Wilcox for the matters before the tribunal and sitting alone, as a judge of the county court (at district judge level) for the matters before the county court. The relevant parts of this decision serve as the reasons for the tribunal decision and the reasoned judgment of the county court.

18. The parties produced their bundles. We have considered the contents carefully. On 19 October 2020, the Respondent provided brief further documents by e-mail.

The hearing and further documents

19. At the hearing on 23 October 2020, the Applicant (Flat 2) attended in person and gave evidence, together with Karen Farrant (Flat 7). The proposed manager, Ms Jary, attended to observe and answer questions. The Respondent was represented by Khalid Hussein (Flat 6), a director, who also gave evidence. Jacqueline Durney of Flat 3 and Olive Porter of Flat 1 (both directors) also attended and gave evidence, as did Arthur Millman of Goldwyns Limited (chartered accountants) and Tom Carrigan (Flat 4). As we explained, because neither Mr nor Mrs Butcher attended the hearing, their witness statement carries less weight, but we have taken it into account.

20. We agreed at the hearing to give: (a) the Claimant seven days to provide copies of the invoices/receipts for the relevant costs included in the service charge for 2017 and a schedule of the costs incurred in the proceedings; and (b) the Defendant a further seven days to comment on those documents. The Claimant produced the 2017 invoices and invoices for subsequent legal costs, but only provided specific details of the court issue fee and interest already set out in the original claim form. The Defendant did not make any representations about those documents. We are told that for personal reasons she was unable to do so. As considered below, it appears there is nothing in these documents about which she would need to make representations. Moreover, there

was no request for more time when the tribunal said that it proposed to proceed to make its determinations based on the hearing and the material provided.

The Property and the Leases

21. The Property is described as a Grade II listed church from the 1850s which was converted in the early 2000s into seven flats. Some flats have three bedrooms and some have two. The Applicant holds a long Lease of Flat 2. The Leases of each flat require provision of repairing and other services by the *Management Company* and contribution by the lessee towards the relevant costs by way of a variable service charge.

22. The *Management Company* expected to provide the services was defined in the Leases as Congregation House Management Company Limited and its successors. The Respondent's directors explained that this company was incorporated but in 2005 the leaseholders decided instead to self-manage and not to employ a managing agent. They said the feeling was this would save costs and only the residents would give the building the care it needed. The leaseholders allowed the company to lapse and formed their own informal residents' association to organise day-to-day matters, with a specified bank account and regular meetings every 6-8 weeks to decide by majority vote what should be done for the building. A fixed basic maintenance charge was agreed for each flat based on square footage, with everyone setting up monthly standing orders, rather than following the variable percentages set out in the Leases.

23. In 2009, the Respondent was incorporated to hold the freehold title to the Property. Each leaseholder has one share in the Respondent. In paragraph 5 of the Fifth Schedule to the Leases, the Respondent (as the *Lessor*) covenants to observe and perform the covenants on the part of the *Management Company* if it is in liquidation or fails to observe and perform its covenants. The parties agreed that Congregation House Management Company Limited was dissolved years ago and the Respondent was to be treated as the *Management Company* (as well as the *Lessor*) under the Leases for the purposes of all the issues in the proceedings.

Application for appointment of a manager

24. As explained in the case management directions, the key issues in this application are as follows. Each is examined in turn below.

    - Did the Applicant's preliminary notice comply with section 22 (and if not, should the tribunal make an order in exercise of its powers under section 24(7)) of the 1987 Act?

- Has the Applicant satisfied the tribunal of any grounds for making an order, as specified in section 24(2) of the 1987 Act?
- Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?
- Is it just and convenient to make a management order?
- Should the tribunal make an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act?

Preliminary notice

25. Before an application is made for a management order under section 24, section 22 of the 1987 Act requires the service of a preliminary notice. This must, among other requirements, set out the grounds on which the tribunal would be asked to make the order and steps for remedying any matters relied upon which are capable of remedy, giving a reasonable period for those steps to be taken.

26. In 2019, the Applicant served two different documents, one in February and another (which stated that it replaced the earlier notice), which was dated July but appears to have been served in August 2019. The validity of the notice was contested by the Respondent.

27. We are not satisfied that either notice complied with section 22. Even the latter notice is a description of various complaints which are quite difficult to follow and do not properly specify any steps to be taken to remedy any matters capable of remedy. However, it seems to us that the substance of the issues and what the Applicant was asking for were (or, eventually, following case management directions from the tribunal, became) clear enough (as examined below). If the grounds for appointment of a manager had been made out, we would have considered making an order in exercise of our powers under section 24(7) of the 1987 Act.

Grounds for appointment of a manager

28. Under section 24(2) of the 1987 Act, the tribunal may appoint a manager in various circumstances. These include where the tribunal is satisfied:

    a. that:

        i. any "*relevant person*" - in this case, the person on whom a preliminary notice has been served under section 22, i.e. the Respondent (section 24(2ZA)) - 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; and

ii. it is just and convenient to make the order in all the circumstances of the case (section 24(2)(a)); or

b. that other circumstances exist which make it just and convenient for the order to be made (section 24(2)(b)).

29. We examine below the groups of issues relied upon by the Applicant as such grounds.

Alleged breaches of obligations owed to the Applicant

30. The Applicant alleged breaches of each of the paragraphs of the Seventh Schedule to the Lease. As to these:

a. the first paragraph is the Applicant's covenant to pay the specified proportion(s) of expenditure as a maintenance charge, as considered below. The Applicant herself has breached this, by withholding payment of service charges. The Respondent did demand higher figures, but the Applicant had agreed and paid those higher charges under the informal arrangements for several years, as considered below. There was nothing to prevent the Applicant from making her payments based on the proportion specified in the Lease of the relevant costs; she knew how much those costs were for the relevant years and with only two limited exceptions agreed they were reasonable, as explained below;

b. the second paragraph is a covenant by the Management Company to provide budget forecasts and reconciliations each year. The Respondent appears not to have strictly complied with this covenant, but they did comply with the substance of it. They provided some budget forecasts and a statement of account each year until and including 2017, and then formal accounts prepared by the accountants from 2018. At the hearing, we and the parties could use these documents to calculate the relevant amounts, as explained below; and

c. the last paragraph of the Seventh Schedule is a covenant to keep proper books of account and notify the lessee of the total amount spent. We have seen nothing showing that this has not been done.

31. The Applicant also alleged breach of paragraph 12 of the Eighth Schedule to the Lease, because the Respondent has not built up a

substantial reserve fund. It probably would be prudent to collect more for a reserve fund, but not doing so was not a breach of the Lease. This paragraph creates a power to collect annual contributions towards a reserve fund, not an obligation to do so. Further, the Applicant was withholding payment even of basic charges.

32. In her documents, the Applicant also alleged that she was entitled to withhold payment of service charges because the Respondent had failed to provide the summary of rights and obligations required by section 21B of the 1985 Act to accompany demands. However, copies of the prescribed summary were included in the Respondent's bundle with the relevant demands (from 2017, after the Applicant started to withhold service charges). The Applicant also alleged failure to produce copies of invoices for service charge costs, saying this was a criminal offence. However, the Applicant had already inspected the invoices for 2018 and 2019 through the accountants as she had requested. Mr Millman explained that he simply did not have invoices from 2017. The Respondent agreed to provide copies of these invoices and has now done so, as explained below.

Conclusion

33. The Applicant made other statements or possible allegations of this type of issue, some of which repeated or overlapped with the main items summarised above. We have considered them carefully, but we are not satisfied that (individually or taken together with the matters referred to above) they constitute a breach of any relevant obligation. The Applicant confirmed that she was not too concerned about the informal arrangements between 2014 when she purchased her flat until early 2017, when she began to withhold service charges. We have examined the service charges for 2017 (as explained below) and found no issues with them; the Applicant has accepted that they were reasonable. By comparison with those charges, we see nothing to indicate any issues with the service charges in previous years. From 2018, because the Applicant insisted, the Respondent arranged for service charges to be held by the accountants on their client account, for the accountants to pay invoices for service charge costs and for accounts to be prepared.

34. On the evidence produced and for the reasons summarised above, we are not satisfied that there is a breach of any obligation owed by the Respondent to the Applicant under her Lease and relating to the management of the premises in question or any part of them. The Applicant's concerns were about historical concerns/matters which have now been explained and regularised as she wished. Even if any technical breaches are continuing, on the evidence produced to us they are not sufficiently serious for it to be just and convenient in all the circumstances for the tribunal to appoint a manager, as considered further below.

Alleged other circumstances – safety/repairs/transparency/hostility/other

35. The Applicant said there were health and safety issues because works to the building were overdue and pieces were falling from the building, particularly when it rained. Mrs Farrant agreed. Ms Jary had inspected the building and said she was concerned about the state of repair; a piece of mortar from the top of the building had fallen in front of her. The parties agreed that the last substantial maintenance works to the building were in 2015, or earlier.

36. The Respondent's directors said they agreed with the Applicant about the importance of safety. They had obtained reports from stonemasons and had shared them with the building control officer from the local authority. They had obtained quotations for repair and maintenance works, but sufficient funds were not available for the works because the Applicant and Mr & Mrs Farrant had withheld their service charges. The Farrants had now paid (under protest), but the Applicant had made only partial payments. As agreed with the local authority, the directors had arranged in about August 2019 for safety barriers to be put in place to keep people out of the area at risk of falling material. They said that these barriers replaced hazard warning tape which had been removed.

37. The Applicant said that scaffolding costs in 2018 of just under £3,000 had been disproportionate because only guttering and other limited repair works had been carried out. She felt that more work should have been done while the scaffolding was up. Ms Porter explained that the scaffolding had to extend to the lower level of the next property, which increased the scaffolding cost. More works were planned in 2018 but this had to be changed to focus on fixing a leak into Flat 7. She said that the problem had been caused or aggravated by the leaseholders of Flat 7 using expanding foam in the roof to attempt to stop a leak. The Respondent had still used the opportunity to have the guttering replaced and other roof works done. The directors said they had consulted with the local authority and had been advised they did not need listed building consent for the new guttering because it was essentially replacing like with like (although they were allowed to increase the diameter of the pipes slightly). The Applicant alleged that the guttering work was unlawful, saying it could only have been carried out with listed building consent. As a result, the directors had obtained retrospective listed building consent for the guttering and evidence of this was provided.

38. The Applicant and Mrs Farrant alleged that the 2018 works were defective, because Mrs Farrant had experienced another leak as soon as the works had been completed. Mrs Farrant said this was a drip in an alcove, sometimes more than a drip if the wind was fierce, and they put a little plastic tray underneath it. She said the builders should have come back to rectify the leak. Mr Hussein said that this had been

reported to insurers and to the roofers, but the roofers had insisted that it was not leaking. Mr & Mrs Farrant had previously allowed access through their velux windows to the roof, but refused access in 2018 and thereafter for the contractor to clear the gutters and carry out any minor roof works. They said that access should be via the communal tower, not their flat, and they had sent a video showing the leak. Mr Hussein said that access through the tower was not straightforward because contractors would have to put a ladder into the tower, so the cheapest and easiest option was access through the Flat 7 window(s). He could not see anything from Mrs Farrant's video (which had not reached the tribunal), but he accepted that the relevant part of the roof was quite exposed and it could be possible that strong winds were driving water under the tiles/slates. He offered to ask the roofer to check everything on the roof again, if access was given for gutter cleaning so they could look at both at the same time.

39. The Applicant also complained about a slippery path to her flat, with photographs showing a sloping path and some showing moss or other green growth. She said she had fallen on it and been unable to get up until someone helped her. She suggested that Mrs Farrant had fallen and broken her wrist here. Ms Porter said that Mrs Farrant had fallen on ice by her car, not on this path. Neither the Applicant nor Mrs Farrant disputed this. Mr Hussein said that he had reported the Applicant's fall to insurers and they had advised that they did not have any concerns about the path. Other photographs appear to show it clear of green growth.

40. The Applicant referred to the historical arrangements, criticising them as "illegal". The Applicant had purchased her flat in 2014. She accepted that the legal structure/arrangements had not been a "huge problem" at that time, because she had "visibility" from the copy accounts provided and trusted those involved. Her position had changed in early February 2017 because she no longer trusted those involved and wanted to know more about what was going on. She said this had only been resolved after she insisted in 2017 that management and service charges be handled as set out in the Leases and in accordance with leasehold law.

41. The Applicant felt there was no transparency. She pointed out that there are only seven leaseholders. Three of the seven leaseholders (Mr & Mrs Farrant, Mr & Mrs Butcher and herself) were dissatisfied with the current arrangements. She was dubious about insurance claims which had been attempted and thought a portal needed to be set up with all relevant documents loaded onto it, so that people could see what was going on. She disputed the validity of the appointment of the directors, saying that the dissatisfied leaseholders had no confidence in them, but did not explain any grounds on which their appointments might be challenged. Mrs Farrant had been concerned about difficulties with obtaining her share in the Respondent, but her conveyancing solicitors did not appear to have procured the requisite documents from the person she and her husband had purchased Flat 7

from. The Applicant felt bullied at meetings and targeted personally; she had taken a witness to a meeting and was looking for accounts and transparency. She had refused to attend an AGM in January to discuss alternative dispute resolution with the solicitor instructed by the directors on behalf of the Respondent. Her refusal was because the three dissatisfied leaseholders had not agreed to the instruction of this solicitor and she could not see why the e-mail from the solicitor to all shareholders was sent as a "BCC", without showing who else it had been sent to. She accepted, when asked, that this might have been for data protection purposes.

42. The Respondent's representatives said that the original residents' association had been informal but had worked well, using majority decisions. They felt that a managing agent was not appropriate for this building, with only seven leaseholders and the personal care that the leaseholders would give the management. The Respondent's directors argued that frustrating misinformation was given by the Applicant and they had provided a great deal of information and documentation to leaseholders. They said that whenever they wrote to the Applicant they received many unhelpful e-mails in response. Leaseholders were faced with difficulties in selling their leases because of a dispute which the directors felt did not have any substance. Mr Hussein said that Ms Porter spoke to Mr & Mrs Butcher to keep them informed. When we asked, he accepted, however, that it was "not ideal" that the directors had not been sending information to leaseholders who were in arrears (or inviting them to meetings or giving them a vote on informal matters), and said the directors would look at this again.

43. Mr Carrigan, who was not a director, had several years ago been in favour of bringing in a managing agent, but having seen the volume of e-mails and the difficulty of the relationship he had changed his mind about this. He felt that a managing agent would be unlikely to be able to resolve this when the accountant and the solicitors had not. He felt that the way to improve relations was to have meetings with all the seven leaseholders, not unpleasant correspondence, and to consult and make decisions on management together.

Conclusion

44. Again, the Applicant made many other statements or possible allegations of these types of issue. We have considered them carefully together with the matters outlined above. We are not satisfied that there are any problems, or continuing problems, which are sufficiently serious for it to be just and convenient for the tribunal to appoint a manager, as considered further below.

45. We accept the evidence of the Respondent about the repair arrangements. Further, the directors were willing to look at collecting more from leaseholders to build up a reserve fund for major works in

future. We accept the evidence of the Respondent about the works in 2018 and we note that, at this time, the Applicant had been withholding payment of service charges for most of 2017 and 2018. She made a partial payment on account when the scaffolding went up for the 2018 works, but there is no indication that there was enough in the service charge account to fund substantial additional works at that time. Mrs Farrant gave no good reasons why contractors should not be allowed access to the roof through her flat to check again for any cause of the drip, or more than a drip, she was concerned about, pending more substantial repair work in future. There was no evidence of any continuing problem with the path.

46. The Respondent should think again about how it communicates with leaseholders, not withholding information from anyone in arrears unless based on legal advice it has good grounds for this. It might also bear in mind that shareholders attending formal general meetings of the Respondent may have any vote conferred on them by the constitution of the company. However, it agreed to reconsider these matters and they are not sufficiently serious to make it just and convenient to appoint a manager.

47. In relation to the other matters the Applicant was concerned about, we can see that a great deal of information has been provided. The cause of the problem seems to have been concerns which, on examination of the documents produced in response, appear to be groundless. The leaseholders need to draw a line under these matters and move on. Sadly, this appeared to have become a personal dispute, which had deteriorated into very difficult correspondence and unpleasantness, with neighbours calling the police to complain about each other and losing sight of the fact that there is now very little in real terms between them.

48. In case we are wrong about any of the matters decided above, we make an overall assessment under the "*just and convenient*" heading below, taking into account our assessment of the proposed manager and what difference she might be able to make.

The proposed manager

49. Ms Jary had not been appointed by a tribunal to manage any other property in the past. She understood that if she was appointed she would be personally liable. She had upgraded her insurance arrangements to £1m professional indemnity cover, but had not produced evidence of this. The Applicant had looked at three potential managers; Ms Jary understood she had been recommended by a lettings company. She confirmed she was independent from the parties.

50. Ms Jary had a career as a conveyancer and then started work in property management about 10 years ago. She had purchased the East

Block Management Limited business last year and now managed 23 properties, including freehold developments for Barratts and listed buildings. The other director was IRPM qualified. Ms Jary did not have (and was not working towards) any management qualifications herself. In view of her conveyancing experience, she considered this unnecessary. She had extensive management experience and had handled many section 20 major works consultations at PMS, the firm she had worked for previously.

51. She said that she had read the bundles, including the leases and the accounts. She said when asked that the leases were adequate "*to some extent*". She said that if they were not she would take this back to the tribunal. A rather generic management plan from Ms Jary had been produced in the bundle. Ms Jary told us at the hearing that she would put in place a 10-year maintenance plan and based on the limited information she currently had would advise an annual routine service charge budget of about £15,000, which included £5,000 towards the reserve fund each year.

52. The documents in the bundle explained what insurance commission and other fees would be charged by East Block Management in addition to a fixed annual management fee, but did not say what the annual fee would be. Ms Jary confirmed it would be £1,800 plus VAT. She said that day to day management would be supervised by the other director, Sam Lapworth. They had five property managers, all of whom had previous property experience; two were training for IRPM qualification. They also had accounts staff.

53. Ms Jary said that communication was key to improving co-operation between the leaseholders. Her company used Facebook groups and the like, discouraged e-mails and tried to keep things to practical bullet points, which were more efficient.

54. However, Ms Jary had been instructed by the Applicant not to answer questions from the directors of the Respondent because, the Applicant said, they were "unpleasant" and "manipulative". We asked whether Ms Jary thought that was a good approach. She said that she would have been prepared to answer the questions and her advice had been that she should, but she was not asked to do so. At this stage, she had simply been asked to make her management proposals.

55. Ms Jary had seen orders from tribunals for appointment of managers in other cases, but had not been asked to prepare or look at one for this application. She thought that she would be taking instructions from the directors, although she understood that she would need to go back to the tribunal if there were problems. She suggested that she should be appointed for one year.

Conclusion

56. In general, Ms Jary gave a professional impression. However, we are not satisfied that it would be appropriate to appoint her as manager in this case. We were not provided with specific management proposals or other documents detailing the management matters or insurance arrangements she discussed at the hearing. She was not sufficiently clear about the nature of the appointment, recognising that she would be appointed by the tribunal in her own name but thinking that she would be taking instructions from the directors. Moreover, while she had sensible thoughts about minimising use of e-mail and said she understood the importance of effective communication, she had been unable to persuade the Applicant to allow her to even talk to the directors. She or her property manager staff would need to endeavour to find ways to co-operate with all the leaseholders, including the directors, if an appointment is to work in practice. This is not an appointment to be taken on and then worked out afterwards. It was important to liaise with the directors and preferably the other leaseholders as well, and put together specific proposals, even if she needed to charge for her time. Given that she was unable to persuade the Applicant to allow her to talk to the directors, it is difficult to see how she could be expected to solve the relationship issues between the leaseholders.

57. We do not intend any criticism of Ms Jary, particularly because she seems simply to have done what she was asked to do. It might well be sensible for the Respondent to consider appointing her company or someone like them as property managers, or at least to give property management advice. However, in view of our decision that is a matter for the Respondent.

Just and convenient

58. We are not satisfied that it would be just and convenient to appoint the proposed manager in all the circumstances of this case. On the evidence produced, there are no problems, or no continuing problems, which make it just and convenient for the tribunal to appoint a manager. Even if there were, for the reasons given above, we are not satisfied that Ms Jary would be the solution.

59. There is clearly a need to organise repairs and maintenance for the building, but it seems there is no funding for that and part of the reason is that the Applicant has been withholding even the basic service charges. The Respondent should take appropriate professional advice, considering collection of contributions from all leaseholders as part of the service charge so that a reserve fund will be in place for works in future and taking care with the consultation requirements under section 20 of the 1985 Act for major works. We agree with the comments made by Mr Carrigan about the future. If the parties can put

the past behind them, minimise use of e-mail (whether by using a simple online facility for access to copies of documents, as the Applicant suggested, or otherwise) and try to get back to meetings (in person or remotely) to which everyone is invited, a neutral approach is taken, everyone has a vote and a majority decision is respected, they may be able to work towards a more neighbourly relationship.

Section 20C application

60. As noted below in relation to the county court proceedings, this decision does not preclude the Respondent from seeking to recover professional and other costs through the service charge. We do not make an order under section 20C of the 1985 Act in relation to the proceedings for appointment of a manager. The Applicant has been unsuccessful and took a robust, repetitive and argumentative approach. She was entitled to do so, but that may have caused greater costs to be incurred than would otherwise be the case. Moreover, it would not be just and equitable for the other leaseholders to have to contribute their share of any reasonable professional costs in relation to these proceedings through the service charge, but not the Applicant, Mr & Mrs Farrant or Mr & Mrs Butcher.

61. We do not make an order under paragraph 5A of Schedule 11 to the 2002 Act. No administration charge in respect of litigation costs in the proceedings for appointment of a manager seems to have been claimed from the Applicant or otherwise identified.

Transferred county court proceedings

62. The sums claimed by the Claimant in the county court proceedings were as follows:

    (i) £3,025.89 for claimed service charge arrears;

    (ii) statutory interest claimed at 8% under section 69 of the County Courts Act 1984 of £96.77 for 2017, £36.13 for 2018, £116.13 for 2019, and on the same basis from 1 February 2020; and

    (iii) legal costs, but referring only to the court issue fee of £185.

63. Under section 176A of the 2002 Act, the court may transfer to the tribunal so much of the county court proceedings as relate to the determination of whether the Defendant is liable to pay the relevant service charges, because the tribunal would have jurisdiction under section 27A of the 1985 Act to determine this.

Determination by the tribunal of the service charges

64. The Claimant contended that the Defendant had agreed at meetings to pay a fixed charge of £120.97 per month (following the informal arrangement which had continued since about 2005) and had done so throughout the period from April 2014 (when she purchased Flat 2) until January 2017. The Defendant said that she had agreed those charges for that period, but from February 2017 she was no longer content with the way things were being done and was concerned about how her money would be spent in future, as noted above. She said (in effect) that she had not agreed to pay the fixed charge indefinitely.

65. We have considered the relevant case law, including the decision of the Upper Tribunal in Admiralty Park Management Company Ltd v Ojo [2016] UKUT 421 (LC). In the circumstances, including the minutes in the bundle and the period of less than three years during which these monthly payments were made, we do not consider that the Defendant is bound to continue paying the fixed monthly service charge, or precluded (by estoppel or otherwise) from insisting on paying the service charge based on the lower proportion specified in the Lease, for 2017 onwards.

66. Accordingly, in the usual way, the payability of the relevant service charges is to be determined by reference first to the Lease and then to section 19 of the 1985 Act. Under the Lease of Flat 2, the leaseholder covenants to pay on a six-monthly basis to the Management Company:

> "*…15.64% of the total expenditure on account of expenses spent or to be spent by the Management Company in respect of the Common Parts and the Property*";
>
> "*and 12.65% in respect of the Management Land*",
>
> "*on the matters specified in the Eighth Schedule*."

67. As mentioned above, the parties agreed that the Claimant was to be treated as the *Management Company* (as well as the *Lessor*) under the Leases. Even if they had not, in view of the nature of this Lease and the specific provision for the Lessor to perform the covenants on the part of the Management Company if it fails to do so, we consider that it would have been necessary to construe the Lease, or imply a term, to that effect.

68. Similarly, the parties did not dispute that all the relevant costs were spent in respect of the *Common Parts* and the *Property*, not any other parts of the *Management Land*. We are satisfied this is correct. In the Lease:

a. *Management Land* is defined as the land shown marked as specified on the plans (excepting the Property and any other parts of the land which have been demised on long leases); and

b. *Common Parts* has a very wide definition, to mean (with our emphasis added): "*…the main structure of the Buildings and the areas hatched black on or over the Management Land and all other parts of the Management Land not comprised (or intended to be comprised) in the Lease or in a lease of any other apartment on the Development*."

69. Following grant of all the Leases, the lower (12.65%) service charge proportion for the other parts of the Management Land seems to be largely or entirely redundant. However, there is no apparent mistake or ambiguity, or any other justification for departing from the normal interpretation of the words used in the Lease. The lower proportion may only have been intended for use during an initial or development phase, or as a sweep-up provision for any residual areas. Accordingly, subject to section 19 of the 1985 Act, the proportion payable by the Defendant is 15.64% of the relevant costs.

70. By section 19 of the 1985 Act, the relevant costs are to be taken into account in determining the amount of a service charge payable: (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 those services or works are of a reasonable standard. We examine the relevant costs below on this basis. This decision summarises the critical points, but we have taken into account the detailed documents and submissions provided by the parties.

2017

71. The relevant costs set out in the statement produced by the Claimant for 1 January to 31 December 2017 were £70 for bank charges, £261.49 for utilities, £913.60 for maintenance and repairs, £420 for window cleaning, £372 for fire inspections, £153.60 for a parking enforcement company, £3,258.85 for insurance, £1,200 for gardening and £301 for accountancy fees, the total sum of £6,950.54.

72. It was not disputed that these are all within the categories of expenditure set out in the Eighth Schedule to the Lease. The Defendant accepted at the hearing that these costs were reasonable. She asked at the hearing why invoices had not been produced (as explained above). As arranged, copy invoices from 2017 were provided by the Claimant by e-mail on 30 October 2020. These cover the substance of the relevant costs and the Defendant had not alleged that any of the relevant sums had not been spent. Nor did she raise any issue about the standard of the relevant services and works. We are satisfied that these costs were reasonably incurred.

73. 15.64% of £6,950.54 is £1,087.06. However, the Claimant did not provide a reconciliation for any overlap between these costs, for the year to 31 December 2017, and those shown in the accounts for the year from 1 December 2017 to 30 November 2018, examined below. Doing the best we can with the material provided, we apportion the £1,087.06 on an equal monthly basis (11/12ths) to £996.47. We understand that the Defendant paid the first monthly instalment of £120.97 but nothing further for this period, leaving an unpaid balance of £875.50.

2017/18

74. The Defendant disputed costs of £4,605 for roof repairs. She did so for the reasons set out above in relation to the appointment of manager proceedings. On the information provided to us, we are satisfied that these costs were reasonably incurred and the works were of a reasonable standard. We accept that the scaffolding was necessary and the Claimant sought to minimise such costs by asking for access through Flat 7 where possible. The scaffolding costs are high relative to the cost of the roof repairs and gutter replacement work carried out, but those costs probably avoided risks of greater costs of water damage to Flat 7, at least. We take into account the drip or more than a drip described by Mrs Farrant, but it seems likely that this was not the result of a material defect in the limited works carried out. For the reasons explained above, the Claimant could not arrange for more substantial repair works to be carried out to get better value from the scaffolding costs.

75. The Defendant also disputed the charges of £3,149 for legal and professional fees. As explained above, she said that the solicitors should not have been instructed without agreement from all the leaseholders/shareholders. She also said the lawyer was overqualified for a small property with seven leaseholders and that having lawyers in addition to accountants was excessive. Under the Eighth Schedule to the Lease, the following types of legal/professional expenditure may be recovered through the service charge:

    a. all sums spent *"…in and incidental to the observances and performance of the obligations on the part of the Management Company pursuant to the Sixth and Seventh Schedules [i.e. the obligations to provide the services and administer the service charge]*" (para. 1);

    b. "*all fees charges expenses … paid to any … Solicitor or any other agent contractor or employee whom the Management Company may engage in connection with the carrying out of its obligations under this lease and the leases including the costs of and incidental to the preparation of the estimates notices and accounts pursuant to the Eighth Schedule*" (para 2); and

c. "*the costs incurred by the Management Company in bringing or defending any actions or other proceedings against or by any person or organisation*" (para. 10).

76. The relevant costs in 2017/18 were not incurred in bringing or defending any actions or proceedings. They were incurred in advising following the correspondence and change of position from the Defendant, and corresponding with the Defendant. Looking at the volume of correspondence and the circumstances, the costs were reasonable in themselves. However, even disregarding the parts covered by insurance, a proportion appears to relate to protracted correspondence with the Defendant. This was reasonable in view of her own correspondence, but is outside the categories of expenditure in respect of the obligations of the Claimant under the Lease and, in part, relates to corporate matters. Based on the evidence provided, we consider that £2,500 of these expenses are payable under the Lease and were reasonably incurred in connection with the relevant obligations.

77. The Defendant did not dispute the other charges set out in the accounts for the year to 30 November 2018, of £58 for water, £3,234 for insurance, £243 for light and heat, £710 for repairs and renewals, £1,309 for gardening, £440 for window cleaning, £54 sundry expenses and £960 for accountancy fees, the total sum of £7,008. Again, it was not disputed that these all fall within the categories of expenditure set out in the Eighth Schedule to the Lease. The Defendant had seen the expenses and Mr Millman confirmed he believed they were all bona fide. There being no issue between the parties on this, we are satisfied that they were reasonably incurred.

78. Accordingly, the total allowed relevant costs are £14,113, comprised of these general expenses of £7,008, the roof repairs of £4,605 and the reduced £2,500 for legal and professional fees. 15.64% of £14,113 is £2,207.27. The Claimant's demands indicate that the Defendant paid £1,000 for this period in August 2018, which leaves an unpaid balance of £1,207.27.

2018/19

79. The accounts for the year to 30 November 2019 set out the relevant costs of £20 for water, £3,365 for insurance, £387 for heat and light, £346 for repairs and renewals, £825 for gardening, £220 for window cleaning, £37 sundry expenses, £960 for accountancy fees and £1,378 for legal and professional fees, the total sum of £7,538. The Defendant accepted at the hearing that these costs were reasonable and raised no issue about the standard of the relevant services and works. She had seen the relevant invoices. There being no issue between the parties on this, we are satisfied that these costs were reasonably incurred, on the same basis as considered above.

80. 15.64% of £7,538 is £1,178.94. The Claimant's demands indicate that the Defendant paid £450 for this period in December 2019, which leaves an unpaid balance of £728.94.

Other service charge years

81. As we explained at the hearing, we could not determine charges after February 2020 in any event, because they were not claimed in the proceedings issued that month. We have not been provided with any information to enable us to determine any charges for the current service charge year (2019/20). In view of this decision, we hope that the parties will be able to agree them. In any event, this determination does not prejudice any future claim for service charges for the period from 1 December 2019. In particular, it does not preclude the Claimant from seeking to recover costs of the proceedings or professional costs through the service charge for the year(s) from 1 December 2019. As set out above, paragraph 10 of the Eighth Schedule specifically includes the costs of bringing or defending any actions or other proceedings. However, without prejudicing any future determination, it appears that under the Lease the Defendant would only be responsible for 15.64% of those service charge costs.

Other claims in the county court proceedings

82. These aspects were considered by Judge David Wyatt sitting alone as a judge of the county court.

Legal costs

83. The claim form referred to legal costs, without making it clear what was being claimed. I gave the Claimant until 30 October 2020 to produce any schedule of such costs. No details were produced other than copy invoices for earlier legal costs (which appear to relate largely to matters other than the county court proceedings) and the same court issue fee of £185 set out in the original claim form. The Claimant did not claim costs under the covenant in paragraph 13 of the Fourth Schedule to the Lease. This is a covenant by the leaseholder to pay all expenses (including solicitors' costs) incurred incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925. They were right not to seek to claim costs under this covenant, because it is clear from the documents that the Respondent was not contemplating forfeiture, only debt recovery, and had accepted various payments on account from the Defendant, as noted above.

84. In the absence of any such contractual entitlement to litigation costs from the Defendant alone, the issue of such costs is to be considered in accordance with the Civil Procedure Rules (CPR). As noted above, this matter was allocated to the small claims track, which means that I may

only order payment of any costs within the categories set out in CPR 27.14(2). No adequate particulars were provided of any costs said to have been incurred in these proceedings (it may be that apart from pre-action correspondence included within the invoices for overall legal costs there were none, since the Respondent's directors handled the proceedings themselves). The Defendant has not acted unreasonably for the purposes of CPR 27.14(2)(g). No other costs within CPR 27.14(2), or otherwise, were claimed, apart from the court issue fee. Accordingly, the costs payable by the Defendant in these proceedings are the court issue fee of £185.

85. It is not clear whether the Defendant's application for an order under paragraph 5A of Schedule 11 to the 2002 Act was intended to apply to the county court proceedings. In any event, I do not make an order under paragraph 5A. This is not an administration charge in respect of litigation costs, and has not been demanded as such. It is a cost payable in my discretion under section 51 of the Senior Courts Act 1981, subject to the CPR. In any event, it is just and equitable for the court issue fee to be paid by the Defendant.

Interest

86. The Claimant sought interest on the sums claimed in the proceedings at the statutory rate of 8% per annum, as set out above. Under section 69 of the County Courts Act 1984, I may include in any sum for which judgment is given simple interest in respect of the period from the date when the cause of action arose. Given the limited information provided by the parties about this, I have decided to award interest as follows, calculated to 18 November 2020. I consider a rate of 4% per annum to be appropriate in a time of longstanding low interest rates.

Amount	**Period from**	**Days**	**Interest (4% pa)**
£875.50	1 December 2017	1083	£103.91
£1,207.27	1 December 2018	718	£94.99
£728.94	1 December 2019	353	£28.20
Total			£227.10

Section 20C application

87. As noted above, this decision does not preclude the Claimant from seeking to recover professional and other costs through the service charge for the periods from 1 December 2019. It is not clear whether the Defendant's section 20C application was intended to apply to the county court proceedings as well as her own application. If it was, I

confirm that I do not make an order under section 20C of the 1985 Act in relation to the county court proceedings. The Defendant withheld payment of (relatively) substantial service charges and the Claimant has been largely successful; the tribunal has awarded most of the sums claimed. The Defendant could have paid reasonable sums on account, even if under protest, and applied to the tribunal to determine reasonableness if the parties were unable to reach agreement, but did not do so. Further, again, it would not be just and equitable for the other leaseholders to have to contribute their share of any reasonable costs of the proceedings through the service charge but not the Applicant, Mr & Mrs Farrant or Mr & Mrs Butcher.

Conclusion

88. In summary, the following awards are made in favour of the landlord:

    (i) in the tribunal, balance of service charges payable: £2,811.71 (£875.50 plus £1,207.27 and £728.94); and

    (ii) in the county court, legal costs of £185 and interest of £227.10.

89. In order to bring the matter to a conclusion I have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Chelmsford, to be entered in the court's records.

90. All payments are to be made by a date to be confirmed following hand down.

Name: Judge David Wyatt **Date:** 18 November 2020

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. 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 date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.

6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down Date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.