Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0029/09/15

In the Matter of 25 The Crecsent, Machen, CF 83 8ND

In the matter of Section 27A of the Landlord and Tenant Act 1985

TRIBUNAL	Upper Tribunal Judge E Mitchell (sitting as a chairman of the Residential Property Tribunal)
	Mr H Lewis (surveyor)
APPLICANT	Mrs J Watkins
RESPONDENT:	Caerphilly County Borough Council

Decision

The Tribunal decides that, under section 19 of the Landlord and Tenant Act 1985:

(a) for service charge accounting year 2006/7, Mrs Watkins was only liable to pay 85% of the amount charged for installing new guttering. This reflects the extent to which the works were not of a reasonable standard;

(b) for service charge accounting year 2007/8, Mrs Watkins was not liable to pay any service charge referable to the installation of a new gate (block cost: £146.44). This cost was not reasonably incurred. She was liable to pay the service charge referable to path works;

(c) for service charge year 2008/09, Mrs Watkins was not liable to pay a service charge of £13.46 for gutter repairs. The costs of these works were not reasonably incurred;

(d) for service charge year 2009/10, Mrs Watkins was liable to pay a service charge referable to the costs of gutter repair works;

(e) for service charge year 2013/14, Mrs Watkins was not liable to pay a service charge demand of £545.23 referable to works under maintenance contract SC 11. The reduced amount she was liable to pay was £409 (see paragraph 59 of these reasons);

(f) for service charge year 2014/15, Mrs Watkins was not liable to pay any service charge referable to the costs of works to install an ARC drain and

manhole cover. These works were not of a reasonable standard. But she was liable to pay the charge demanded for attaching guttering to a shed.

Reasons for decision

The course of the proceedings

1. On 17th February 2016, the tribunal conducted a hearing of this application having, earlier that day, carried out an inspection of the subject property (neither party requested a hearing but a procedural chairman directed one). The hearing was adjourned and the parties were invited to make further submissions in order to clarify the issues that required resolution. At the hearing, the parties agreed to this course.

2. Following the hearing, the tribunal gave a direction informing the parties that, in order to determine the application, it required:

(1) Caerphilly County Borough Council to supply the tribunal with a document:

(a) containing any further written representations that the Council wished to make in the light of the issues arising on this application, as described in a Schedule to the tribunal's letter, to include any dispute as to the description of the issues;

(b) that:

(i) explained (to include any supporting evidence) the basis on which the tribunal was invited to find that, under maintenance contract SC11, the works carried out on the block (of which 25 The Crescent forms part) involved more than simply replacing front doors;

(ii) stated whether the council disputed that Mrs Watkins was entitled to withhold payment of service charges in respect of maintenance contract SC11 because she had not been supplied with a written summary of service charges under section 21 of the Landlord and Tenant Act 1985. And, if that is disputed, explain why;

(iii) explained why some, but not all, charges for clearing out gutters were waived on the basis that this was the council's sole responsibility.

(2) Mrs Watkins to supply the tribunal with a document containing any further written representations that she wished to make in the light of the issues arising on this application, as described in the Schedule to the letter, including whether she disputed that description of the issues.

(3) The parties to disclose their responses to each other and, should they wish to reply, supply the tribunal within two weeks of the response being sent to them.

3. The parties were also invited to request a further hearing should they think that necessary. No such request was made. The parties were also invited to make

comments on the tribunal's provisional understanding of the issues that required resolution in this case.

Responses to the directions

4. So far as the accuracy of the factual background (as provisionally described in the directions) was concerned, in their response the council:

> (a) asserted that no complaints were received about standing water or the absence of guttering and a downpipe on a shed until 2014. We accept that but, in fact, the factual background section of our directions did not suggest otherwise;
>
> (b) said they were unable to locate any documentary evidence as to why a front gate was replaced in 2007;
>
> (c) made a number of other comments about the dates of relevant events that are reflected in the factual background section of our decision.

5. The council's response also said that, normally, leaseholders are expected to pay towards the costs of clearing gutters. The reason some of their correspondence said "leaseholder was not liable to pay" was because the council had decided in its discretion to waive charges for certain clearing costs.

6. The council also informed the tribunal that, normally, they would not attach gutters to a shed the size of Mrs Watkins' so it was likely that, prior to the roof replacement, it had no guttering. While, that was not entirely consistent with a council file note of 3rd June 2014, which stated the guttering was "not put back on" after the roof was replaced, we accept the writer might have been relying on Mrs Watkins' recollection rather than first-hand knowledge.

7. So far as the legal framework section of the directions was concerned, the council argued Mrs Watkins could not rely on section 21A of the Landlord and Tenant Act 1985 (which concerns withholding service charges) because it had not been brought fully into force in Wales.

8. Mrs Watkins had no further comment to make.

The time taken to give this decision

9. The Tribunal apologises to the parties for the time it has taken to finalise this decision and regrets any frustration or inconvenience this has caused. The delay is partly explained by the complexity of the issues arising and the need to clarify the basis of Mrs Watkins' application; that lack of clarity not having been cured by the Tribunal's pre-hearing case management directions. Nevertheless, the parties have had to wait too long for this decision and, for that, the Tribunal apologises.

The inspection

10. An inspection of the property, internal and external, was carried out on the morning of the hearing. Fortunately, in the light of Mrs Watkin's claims, it was raining heavily throughout the inspection. We took a number of photos. The same two

council officials who attended the hearing also observed the inspection. Those officials were Mrs Betts and Mrs Jones. The inspection was restricted to Mrs Watkins' property (no.25) and the common parts of the block adjacent to her property. Her property is part of a small block of four maisonettes.

11 A summary of our inspection findings are as follows:

(a) a 'swan neck' gutter connection at the front of the block was defective, allowing water to escape;

(b) rainwater was not draining effectively from the area around no. 25's front door. Localised flooding had occurred;

(c) due to that flooding we were unable to locate the inspection cover for the drainage system of which the recently replaced manhole cover probably formed part;

(d) water was not pooling on the front path. An ARC drain was operating effectively;

(e) the door to a store room appeared to have been painted relatively recently.

Factual background

12. By her application of 22nd September 2015, Mrs Watkins indicated that she sought a determination of services charges for "2012" and "2009".

13. Mrs Watkins' application form did not set out the basis for her application. She simply wrote "please see letters" by which she meant a bundle of correspondence included with her application. In their response to Mrs Watkins' application, the council supplied further documentary evidence but the legal basis for the application was not properly clarified before the hearing. In particular, Mrs Watkins was not directed, by whichever procedural chairman dealt with her case, to set out point-by-point her reasons for disputing various service charges and that was the case that this tribunal had to get to grips with. This explains why further information was sought, with the parties' agreement, after the hearing.

What the documentary evidence reveals

14. Mrs Watkins disputes her liability to pay services charges referable to a range of costs incurred by the council over a number of year practical terms.

15. There is a long and involved history to this case. The documentary evidence reveals the following:

(1) On **8th January 2007**, repair works were first done to guttering that had recently been installed to the block of which Mrs Watkins' home forms part. And By letter receipt-stamped **26th September 2008,** Mrs Watkins wrote to the council stating a housing official told her she would not have to pay for recent works to replace a path and gate and complaining that the charge was "extortionate" given the minimal work involved in the path works.

(2) Mrs Watkins was issued with a service charge "bill" for **2007/08 (period: 1/4/2007 to 31/3/2008).** This included a demand of £243.08 in respect of her quarter share of the following block costs, that is £3.73 for clearing gutters outside no.24 and £217.21 for the path and gate works, plus a 10% administration charge.

(3) On **18th August 2008** the council wrote to Mrs Watkins stating that their letter enclosed a service charge bill for 2007/08, an invoice and a summary of Mrs Watkins' rights and obligations (although the invoice bears the date **15th September 2008**).

(4) By letter receipt-stamped **26th September 2008**, Mrs Watkins repeated her claim that an official told her she would not have to pay for the path works and that the new gate was unnecessary because it replaced a perfectly adequate gate. Mrs Watkins asked the council to explain why she had been charged for the path and the gate.

(5) By letter dated **7th October 2008**, the council responded. The council stated they had no record of Mrs Watkins being informed she would not be charged for the path repairs. This letter also refers to a letter of **15th January 2007** in which a council official is said to have reported the need for path repairs to an Area Housing Office. The letter concludes the service charge bill was correct and "I have instructed that recovery continues". Mrs Watkins' query about the need for the gate to be replaced was not answered;

(6) The council also supplied a note of a telephone conversation between Mrs Watkins and a council official on **7th October 2008** (it seems likely the conversation took place before the 7th October 2008 letter was written). This says Mrs Watkins reported "the repair had not been completed correctly and that the gate was not needed in the first instance" and was informed that, if she put her complaint in writing, "I will raise this issue with the Inspector". We observe that Mrs Watkins had already put her argument about the gate in writing (by the letter of 26th September 2008).

(7) By letter receipt-stamped **2nd February 2009,** Mrs Watkins wrote to the council stating that she was charged £700 for replacement guttering over two years' ago but it was faulty and the rain still poured down her wall. In the council's response to our directions, they said the guttering was replaced in 2006. Mrs Watkins asked the council to arrange for a skilled workman to re-do the work. Mrs Watkins wrote a similar letter receipt-stamped **23rd November 2009**.

(8) On **9th February 2009,** the council wrote to Mrs Watkins stating that her concerns had been reported to the Lower Rhymney Valley Housing Office. On **25th November 2009** that Office wrote that a Repair Inspector would "re-inspect the guttering in due course";

(9) on **16th August 2009** 2 gutter joints were re-made and gutter cleared out (cost: £98.52)

(10) on **5th December 2009** Mrs Watkins wrote to the council requesting a copy of the guarantee supplied by the guttering contractor. Their response dated **17 December 2009** said no such guarantee could still be in force but a "leak over the front bedroom window", identified during a recent inspection, would be repaired without charge. Later correspondence suggest this inspection took place on **26th November 2009**;

(11) on **22nd January 2010**, two gutter joints were re-made and gutters cleaned out (cost: £52.86)

(12) on **4th February 2010,** Mrs Watkins made a written complaint to the council about the guttering;

(13) An internal council email of **24th February 2010**, written by a council repairs inspector, states the inspector inspected the property on that date. The email reports a blocked front downpipe and surmises that this was due to leaf accumulation because it was not blocked when the inspector last visited on 26th November 2009. The inspector says he "will have to raise a works order to clear the leaves in the swan neck".

(14) A council letter of **26th February 2010** asserts that an inspector on **26th November 2009** identified no leak (which was, arguably, inconsistent with the contents of the **5th December 2009** letter). On **24th February 2010** another inspector identified a blocked down pipe, probably caused by a leaf blockage, for which a "works order" had been raised. In relation to certain of Mrs Watkins' complaints, this letter said £41.67 had been offset against other service charges (invoice ref. 081920281);

(15) on **1st March 2010,** Mrs Watkins wrote to the council stating she would withhold payments due to the "extortionately priced" guttering and they would not resume until work was carried out to install adequate guttering;

(16) on **8th August 2010,** the authority sent Mrs Watkins a notice (that stated it was not a bill) recording that costs of £13.47 and £10 had been incurred in repairing guttering on **22nd January 2010** and cleaning out guttering on **11th March 2010** respectively. Subsequently, the council issued Mrs Watkins with a service charge bill for 2009/10 which included these charges. With a 10% administration charge, the total for repair and maintenance charges was £25.81

(17) On **5th March 2010** the council wrote to Mrs Watkins regarding guttering, saying workmen would attend on **11th March 2010**.

(18) **On 9th March 2010** Mrs Watkins wrote to the council disputing that leaves were the cause of the guttering problems. She said she would resume payments of service charges once the problem was rectified.

(19) on **17th September 2010** the council issued an invoice for 09/10 for £13.46.

(20) On **15th April 2011,** Mrs Watkins wrote to the council regarding the 2007/08 path charges. She argued this was solely the council's responsibility as it stood on the council's land not hers. And she again claimed she had been informed she would not have to pay in any event. She asked for a refund of the £217.21 she had already paid.

(21) On **19th April 2011**, the council wrote to Mrs Watkins informing her they intended to carry out works to which the consultation requirements in section 20 of the Landlord and Tenant Act 1985 applied. The original schedule of works indicated:

- Costs to be incurred in applying flexigloss and in washing down surfaces to all four properties in the block (£180.15);
- Various costs to be incurred in works to the other three properties (£999.90 plus £1297.76 plus £638.08);
- Costs for works specific to Mrs Watkins' property of £452.58, made up of replacing UPVC windows on "store", applying flexigloss to the store doors and "existing frames", staining "existing windows", a contribution to block costs, together with a "preliminaries adjustment".

(22) On **6th May 2011**, the council wrote to Mrs W refusing to refund the charges she paid for the 2008 path and gate works. This letter referred to October 2008 communications between Mrs Watkins and council officials which "fully explained why you were liable to contribute towards the cost of repairing the path" (without mentioning the gate).

(23) A 'final notice' of **27th May 2011** demanded payment of a balance of £13.46 (£146.91 having been paid or adjusted away), regarding the invoice of **24th September 2010**.

(24) On **13th June 2011,** Mrs Watkins wrote to her MP complaining that she had been charged £700 for replacement guttering but that "water still pours out when it rains".

(25) On **29th June 2011**, an internal council memo. to the council's income department requested a reduction of £14.81 on invoice 082819731 because it related to costs incurred in clearing a gutter blocked by leaves from a large overhanging tree for which "leaseholder not liable to pay". This concerned the service charge bill for 2010/11. On that same date, the council wrote to Mrs Watkins' M.P. stating that arrangements had been made for the tree to be cut back.

(26) An internal council file note of **1st September 2011** refers to discussions between council officials and the office of Mrs Watkins' M.P. This notes that in 2006 Mrs Watkins was charged £706.03 for replacement guttering works but says she did not complain about the guttering until 2009. The view was expressed that if "the gutters had been leaking the whole time" the council would have received more complaints.

(27) Mrs Watkins was issued with a service charge bill for 2010/11 which included no charges for repairs and maintenance during that service charge accounting period.

(28) A council file note of a site visit on **18th November 2011** says, at the visit, Mrs Watkins informed council staff that she thought a guttering joint at the front of the property was defective so that, when it rained, water leaked on to her bedroom windowsill. The note says an inspector would visit to discuss this with Mrs Watkins who thought the council mistakenly concluded all guttering problems were due to leaf blockage. The note also says the official informed Mrs Watkins that, if guttering repairs were required, the council would consider waiving the charge but did not promise to do so.

(29) The 18th November 2011 file note also lists block costs for guttering-related work since 2007. A £51 cost dated **18th December 2009** was not charged because it involved cleaning out leaves but three costs were charged: £14.92 for leaking gutters outside no. 24 (**8th January 2007**); £98.52 for leaking gutters at the front of no. 25 (**9th February 2009**); £40 for cleaning out "swan neck" at front of block (**5th March 2010**).

(30) On **8th December 2011**, the council wrote to Mrs Watkins stating it has awarded" the section 20 works contract to the cheapest tenderer. This letter informed Mrs Watkins that her contribution to the costs of the works would be £931.79.

(31) on **22nd December 2011** a repair was made to "gutter joint above bedroom window no.25" (cost: 120.89).

(32) On **5th January 2012,** the council wrote to Mrs W, stating a guttering inspection was planned and the inspector had been asked to give an update.

(33) On **11th January 2012,** the council wrote to Mrs Watkins stating that recent guttering joint repairs had cost £120.89 but she would not be charged for this due to "the length of time that this matter has been ongoing and the problems that you have encountered".

(34) The schedule of section 20 works was amended on **6th February 2012** to add replacement of Mrs Watkins' front door but this did not alter Mrs Watkins' estimated charge because the amended schedule also deleted works to replace the front door of another property in the block.

(35) On **29th February 2012,** Mrs Watkins wrote to the council about the section 20 schedule stating she only had one PVC window which had no defects and there was also no need to replace her front door. The letter also thanked the council for fixing her guttering.

(36) The council responded by letter of **26th March 2012** stating Mrs Watkins' window had been incorrectly identified as hardwood and "this error has now been corrected". Regarding the front door, a separate letter of this date informed Mrs Watkins that, if she did not want her door replaced, she should inform the council in writing by **9th April 2012**. And on **15th May 2012**, the

council wrote to Mrs Watkins acknowledging receipt of her “Non-Acceptance of Front Door Upgrade form” and that “the necessary alterations to your recharges” would be reflected in her final bill.

(37) On **15th May 2012,** Mrs Watkins wrote to the council stating that she had paid an excessive charge for gutter replacement, following which it had “continuously leaked”

(38) By internal email of **7th June 2012**, a council area supervisor for building maintenance referred to a foreman’s visit on that date. The foreman reported that, despite the “heavy showers” that day, the gutter was in good working order with no sign of a leak although one gutter joint might be a “bit low” causing heavy rainfall to overshoot the joint. This could be dealt with by raising the gutter (at no cost). The supervisor also expressed the view that, in the light of the nearby trees and the pitch of the roof, the gutters needed to be regularly cleaned out.

(39) On **20th June 2012,** the council wrote to Mrs Watkins about guttering, referring to a foreman’s visit to her home on **7th June 2012** during “heavy showers”. The foreman’s view was that the guttering appeared in good working order but there was a “slight issue” concerning the joints being too low resulting in rainfall overshoot. Mrs Watkins was informed that the guttering would be adjusted at no charge and asked Mrs Watkins to contact the council if, following the work, problems persisted

(40) The above letter, as supplied to the tribunal, has manuscript additions made by Mrs Watkins referring to a workmen’s visit on **21st June 2012**, stating she was told the problem was simply a blockage which he had cleared away. Mrs Watkins said she rang a council official at 9.10 a.m. to tell her about this.

(41) Mrs Watkins was issued with a service charge bill for 2011/12 which included no charges for repairs and maintenance.

(42) Mrs Watkins was issued with a service charge bill for 2012/13 which included no charges for repairs and maintenance.

(43) On **10th February 2014**, the council wrote to Mrs Watkins about charges for the costs of the section 20 works (maintenance contract SC11). This gave block costs of £2301.41 of which Mrs Watkins was expected to pay one quarter plus a 10% administration charge. The total charge for Mrs Watkins would be £632.89. This was not, however, a demand for payment. The attached schedule of works indicated that the specific works for no. 25 were replacement of UPVC window to “store”, applying flexigloss to store door and “existing frames” and staining “existing windows”.

(44) Mrs Watkins was issued with an invoice dated **13th February 2014** which demanded payment of £632.89 in respect of “planned maintenance contract SC11”. The council pointed out in their response to our directions that the invoice stated payment was due by **20th February 2014**;

(45) In a letter dated **17th February 2014,** Mrs Watkins again argued in 2007 she was told she would not have to pay for the path works. She also stated the new path had not remedied the water pooling problem and requested a refund of the service charges paid. Mrs Watkins also raised another matter; an earlier replacement of her shed's roof (to remove asbestos) had not involved replacement of guttering and drainpipe. As rainwater had flowed down the shed walls, she had to re-paint three times.

(46) On **21st February 2014,** the council wrote to Mrs Watkins stating that the total cost of the SC11 works was 2301.41. Her contribution was ¼ of that plus a 10% administration fee, a total of 632.89. This stated it was not "an official invoice" so no payment was yet required. We note that this letter was written after Mrs Watkins was sent an official invoice (dated **13th February 2014**). The council say this was because their previous letter was sent to the wrong address;

(47) On **18th March 2014,** Mrs Watkins wrote to the council stating that, with reference to maintenance contract SC11, she was being asked to pay for having "nothing whatsoever done to my home". She added "until I get the real cost no one will get paid". She had already written a similar letter on **24th February 2014**.

(48) On **21st March 2014**, the council issued Mrs Watkins with a "final notice" demanding payment of £632.89 which stated that, unless the full amount was paid immediately, the matter would be referred to a collection agency or the council's solicitor.

(49) On **8th May 2014**, the council responded to Mrs Watkins' letter of 24th February 2014. This: accepted her store window had not in fact been replaced and it was charged in error; the shed door and frame were repainted so she would be charged; the staining works would also be charged because "the appearance of the staining to the windows to your flat is no different to the adjoining properties". The revised sum due from Mrs Watkins was calculated at £571.92 and the Finance Section were asked to reduce Mrs Watkins' invoice accordingly.

(50) A council file note dated **3rd June 2014** describes a site visit of that date by a Leasehold Service Officer in Mrs Watkins' presence. Mrs Watkins informed the official that, despite the 2007 path works, water continued to pool on the pathway and the trees around the property meant it was always damp. The note also refers to an uncovered drain beside the front door and queries whether it can be cleared out or covered up and notes Mrs Watkins' shed has no guttering (the guttering not having been renewed when the roof was replaced "a few years back"). Finally, the note repeats Mrs Watkins' assertion that, as part of maintenance contract SC11, nothing was painted and no windows were stained.

(51) An internal council email of **16th June 2014** asks whether Mrs Watkins' path complaint can be looked into, whether something can be done about the

trees, and passes on her complaint about the absence of shed guttering and her belief that a natural spring is partly the cause of her damp problems.

(52) Mrs Watkins was issued with a service charge bill for 2013/14 which included no charges for repair and maintenance.

(53) On **11th September 2014,** the council wrote that it was still investigating Mrs Watkins' queries re. SC11 invoice and hoped to provide a full response soon. The written response was dated **6th January 2015**. Referring to the council's standard contract-compliance and supervision procedures, the council asserted the works in question must have been done and informed Mrs Watkins that payment of the full sum was required.

(54) On **10th January 2015,** Mrs Watkins wrote to the council stating she intended to obtain evidence from a painter as to the date on which the windows were last painted. She said she was "aggrieved" by the lack of evidence supplied and, without it, said the council could be "grossly overcharging"

(55) On **20th January 2015**, the council issued Mrs Watkins with a final notice demanding payment of £571.92 and indicating that legal action might be taken if it was not paid immediately.

(56) On **10th February 2015,** the council wrote to Mrs Watkins stating that her lease gave her no "rights to the front garden" of her block so that any works to a tree there had to be done by the council, not Mrs Watkins. The council referred to an October 2013 inspection of the tree which showed it to be in good condition. Mrs Watkins was asked to contact the council if its condition changed. The next tree inspection was due in October 2016. On this letter, Mrs Watkins wrote by hand "if I have no rights to the front garden…why am I being charged for the soakaway there".

(57) On **19th February 2015**, a council official wrote that she had asked the Principal Contracts Officer if he would "like to respond" to "comments made" in the letter of 10th January 2015 and had requested documentation to "evidence the cost of the work from the contractor"

(58) On **2nd March 2015**, the council wrote to Mrs Watkins informing her that she would not be charged for staining works under contract SC 11 which reduced her invoice to £545.23. Mrs Watkins was informed that the Finance Section would reduce her invoice accordingly. And on **10th March 2015**, Mrs Watkins was issued with a credit note reducing the invoice demand by £26.69. This says the reduction was made because the council could not "evidence" that staining works were carried out.

(59) On **10th March 2015** Mrs Watkins wrote to the council again disputing that any staining had been done and that a neighbour informed her the only work done on the block was to replace two front doors. The letter ended "please arrange an amendment" which the council informed the tribunal they took to mean a reduction of £29.69;

(60) On **25th June 2015**, the council wrote to Mrs Watkins indicating charges to be included in the service charge for 2014/15 but also stating this was not an invoice. These charges were £88.39 in respect of an arco channel and soakaway (works intended to remedy water pooling) (**9th July 2014**) and £40.70 in respect of renewal of a manhole cover (**7th July 2014**).

(61) On **29th July 2015,** Mrs Watkins wrote to the council stating the new soakaway did not function and disputing her liability to pay for a new manhole cover which she thought should be paid for by a utility company. Mrs Watkins also queried why she had been charged at all because it was not the council's responsibility to do these works. She requested a "breakdown of costs".

(62) On **11th August 2015**, the council responded. Regarding the soakaway, this said "as the repair has been unsuccessful", it would be re-inspected and, if necessary, rectified. Mrs Watkins was told she would have to pay for the initial work but not any rectification works. The writer also stated she had been "advised" that the council were responsible for replacing the manhole cover so that, under Mrs Watkins' lease, she had to pay a charge. However, the charge for the manhole cover was reduced to £98.06 causing Mrs Watkins' contribution to fall to £24.52. The council informed the tribunal this was because it was no longer classed as a "standard large repair".

(63) On **19th August 2015,** Mrs Watkins wrote to the council stating that, in her opinion, the underlying cause of the 'standing water' problem was defective drains (a design defect due to the architect's ignorance of nearby natural springs) and that was the council's responsibility. The path works were supposed to address this problem, as was shown by it being laid with a noticeable incline, but had not worked. She said she was being penalized for the council's sub-standard work and requested a "detailed account" for the 'unnecessary' soakaway and proof of why replacement of the manhole cover was needed.

(64) On **11th September 2015**, the council issued a final notice demanding payment of the charge of £545.23 in respect of contract SC11.

(65) On **21st September 2015**, the council wrote to Mrs Watkins attaching an invoice for her service charges for 2014/15. The letter also states it includes a summary of Mrs Watkins' "rights and obligations". The invoiced sum is £317.11. Of this, £168.97 relates to repairs and maintenance made up of: £88.39 for costs of the soakaway (**9th July 2014**); £40.70 for renewing gutters and downpipe to shed (**7th August 2014**); £24.52 for renewal of manhole cover (7th August 2014).

(66) On **22nd September 2015** Mrs Watkins completed her tribunal application form. It was received on a day in September 2015 (the exact date is unclear because the tribunal's date stamp is very feint).

(67) On **25th September 2015**, the council wrote to Mrs Watkins giving a breakdown of the £216.86 block costs for the soakaway (less than previously indicated). An amended service charge bill was enclosed (with a charge for

repairs and maintenance of £131.38) and a fresh invoice requested. So far as the manhole cover was concerned, this letter did not address Mrs Watkins' argument that a utility company should pay.

(68) On **29th September 2015**, Mrs Watkins wrote to the council stating "I'm only questioning the period where I have been charged for repairs" and the charges for contract SC11 were the only outstanding charges that she had not been paid.

(69) By letter dated **29th December 2015**, Mrs Watkins wrote: as a result of the absence of shed guttering, she had had to paint it regularly; it took many years for the block guttering to be brought up to an acceptable standard during which time she regularly had to pay herself for the gutters to be cleared; repeated her argument that under contract SC 11 the only work done on her block was to replace doors.

16. In response to the tribunal's directions, the council supplied further documentary evidence about the works carried out under contract SC11, comprised of:

(a) a valuation form dated 13th February 2013 prepared by the 'project quantity surveyor'. This stated that, at 12th February 2013, costs incurred to the block of which Mrs Watkins' home forms part were £2438.85, not including VAT (against an anticipated cost of £2827.6);

(b) a memo. written by an internal auditor dated 20th January 2014 which agreed the final account for contract SC11 at £207,439.73 (it included many other properties);

(c) a clerk of works progress report. Relating to 18 homes, one of which was Mrs Watkins', this stated that, during the week ending 19th February 2012, a painter did 31 hours work;

(d) a contract variation note dated 8th March 2012, completed by the contractor, that related to no.26 The Crescent (i.e. not Mrs Watkins'), describing additional work: "washing down fascia and soffit on rear of property".

2. Taking stock of Mrs Watkins' application to the tribunal

Which service charge demands are outstanding?

17. The council concede Mrs Watkins has paid all service charges demanded since 2007 apart from the demand relating to maintenance contract SC11. However, as we note below, the fact that Mrs Watkins has paid other service charge demands does not prevent her from challenging those service charges before the tribunal.

The issues raised by Mrs Watkins' application

18. Mrs Watkins is not a lawyer. And the tribunal has an investigative (or inquisitorial) function. Further, she was not required, before the hearing, to clarify the basis for her application. Nor did the council ask the tribunal, at the pre-hearing stage, to require Mrs Watkins to clarify her case. In combination, these factors lead us to decide that

we should interpret Mrs Watkins' application as not solely concerned with service charge demands made in 2009 and 2012 (the years referred to in her application form). She may have referred only to those years in her application form because those were the years in which she most vigorously debated certain issues with the council.

19. The council did not dispute, in principle, our provisional interpretation of the issues raised by Mrs Watkins' application as set out in our directions. And neither party argued this case raised additional issues. Our description of the issues in this decision varies to a slight degree as compared to the provisional list in the directions. It seemed to us logical to deal with all gutter repair and leaf clearing disputes together, rather than by reference to different years;

20. We decide to analyse Mrs Watkins' application by reference to the issues raised in the bundle of correspondence Mrs Watkins submitted with her application. On that basis, the issues raised by Mrs Watkins' application are as follows:

(a) whether council officials told Mrs Watkins that she would not have to pay for the 2006/7 path and gate works and, if so, whether that affects her liability to pay for those works (see Mrs Watkins' letter to the council received by it on 26th September 2008 and her letters of 15th April 2011 and 15th May 2012);

(b) whether Mrs Watkins was liable under her lease to pay for the 2008 path works (see Mrs Watkins' letter to the council of 15th April 2011)

(c) whether the 2006/7 path and gate costs were reasonably incurred (see Mrs Watkins' letter received by the council on 26th September 2008 in which she asserts those costs were extortionate given the minimal work involved);

(d) whether the 2006/7 path costs were reasonably incurred or were of a reasonable standard given Mrs Watkins' argument that they failed to cure the water pooling problem (see Mrs Watkins letter of August 19th 2015);

(e) whether the 2006/7 gate costs were reasonably incurred in the light of Mrs Watkins' argument that there was no need to replace a perfectly adequate gate (see the multiple letters in which Mrs Watkins' made this point to the council, as described in the factual background section above);

(f) whether Mrs Watkins is able to dispute the 2006/7 costs given that, by the date of Mrs Watkins' tribunal application, it seems more than 6 years had elapsed since she received a service charge demand in relation to those costs;

(g) whether the 2007 gutter replacement costs (of some £700) were reasonably incurred or were for work of an adequate standard (see the multiple letters in which Mrs Watkins makes this complaint, as set out in the factual background section above);

(h) whether Mrs Watkins is able to dispute the 2007 gutter replacement costs given that, by the date of Mrs Watkins' tribunal application, it seems more

than 6 years had elapsed since a demand was made for a service charge in relation to those costs;

(i) whether costs of gutter repair works in 2009 and 2010 were reasonably incurred or related to works of a reasonable standard;

(j) whether costs of work to clear leaves from gutters in various years were reasonably incurred or related to works of a reasonable standard;

(k) whether costs incurred in fixing gutters and a downpipe to Mrs Watkins' shed were reasonably incurred given Mrs Watkins' contention that these should have been put in place when the shed roof was replaced in 2006 (or thereabouts) and her claim that, subsequently, she needed to re-paint the shed on three occasions due to discolouration that would not have occurred had guttering been installed originally(see Mrs Watkins' letter of 17th February 2014);

(l) whether the costs relating to maintenance contract SC11 were reasonably incurred given Mrs Watkins' contention that, under this contract, no work was done to her property at all (see Mrs Watkins' letter of 18th March 2014). And, related to this, whether the council can meet Mrs Watkins' argument that no flexigloss paint was applied to her home given their concession that they could not "evidence" staining works (see the council's invoice dated 10th March 2015 which was supplied by the council in response to Mrs Watkins' application);

(m) whether Mrs Watkins was entitled to withhold payment of the service charges relating to maintenance contract SC11 on the basis that she was not supplied with a summary of the costs to which the charges related in accordance with the Landlord and Tenant Act 1985 (see Mrs Watkins' letter to the council of 18th March 2014);

(n) whether the works done to other flats in Mrs Watkins' block under maintenance contract SC11 were reasonably incurred (she was expected to contribute towards the costs of these works). See Mrs Watkins letter to the council of 10th March 2015 in which she argues the only works done to the block were replacement of two front doors;

(o) whether Mrs Watkins is liable under the terms of the lease to pay for the 2014 soakaway (see Mrs Watkins letter to the council dated 10th February 2015 on which she had written "if I have no rights to the front garden…why am I being charged for the soakaway there?");

(p) whether the costs relating to the 2014 soakaway were reasonably incurred or works of a reasonable standard given Mrs Watkins' argument that it does not function properly (see her letter to the council dated 29th July 2015);

(q) whether the costs relating to the 2014 manhole cover replacement were reasonably incurred or were not something for which Mrs Watkins was liable under the terms of her lease (see her letters to the council dated 29th July

2015 and 19th August 2015 in which she argues a utility company should have been responsible for this).

The pattern of service charge demands since 2008

21. The service charge demands for repairs and maintenance have been something of a moving target because there has been a pattern of adjustment and waiver in response to Mrs Watkins' complaints and queries over the years. But neither party disputed our understanding of the pattern of charges set out in our directions, namely:

(a) for service charge accounting year 2006/07, Mrs Watkins' received a demand to pay some £700 for the installation in 2006 of new guttering to her block;

(b) for service charge accounting year 2007/08, Mrs Watkins received a demand to pay £3.73 for cleaning out gutters and £217.21 for the path and gate works (her share of the block costs of £722.38 (path) and £146.44 (gate), to which a 10% administration fee was added);;

(c) for service charge year 2008/09, Mrs Watkins received a demand of £13.46 for repair of a gutter joint;

(d) for service charge year 2009/10, Mrs Watkins received a demand for £25.81 for clearing leaves from gutters and a gutter joint repair;

(e) for service charge year 2010/11, Mrs Watkins was not required to pay any service charges for repairs and maintenance;

(f) for service charge year 2011/12, Mrs Watkins was not required to pay any service charges for repairs and maintenance;

(g) for service charge year 2012/13, Mrs Watkins was not required to pay any service charges for repairs and maintenance;

(h) for service charge year 2013/14, Mrs Watkins received a final service charge demand related to maintenance contract SC11 for £545.23 (a previously demanded sum having twice been reduced).;

(i) for service charge year 2014/15, Mrs Watkins received a service charge demand for repairs and maintenance of £131.38 (soakway, manhole cover, shed guttering and downpipe).

3. The relevant provisions of Mrs Watkins' lease

22. Dated 27th September 1999, Mr & Mrs Watkins (the Lessees) were granted by Caerphilly County Borough Council a 125 year lease of the property. The lease contains covenants for:

(a) the Lessee to pay to the council "all…charges…which may at any time during the said term be…charged…upon the Flat or the owner or occupier in respect thereof and in the event of any…charges…being assessed charged or imposed in respect of the Property to pay the proper proportion of

such…charges…attributable to the Flat" (5(i)(b)). Clause 5(ii) deals with disputes over the "proper proportion". This is to be determined by the council but, if that determination is not accepted, the Lessee is entitled to have the matter determined by an "independent surveyor nominated in default of agreement by the President of the [RICS]" whose determination is said to be binding;

(b) the Lessee "to observe and perform all the Lessees covenants…" (5(i)(i));

(c) "pay to the Lessor annually a sum representing the Lessor's costs of management of the flat together with a reasonable proportion of the Lessor's costs of management of the Property which sum to be so certified by the Head of Corporate Finance for the time being of the Lessor (whose certificate shall be conclusive and binding) and such payment to be made on demand" (5(i)(k));

(d) "contribute and pay one equal quarter part of the costs expenses and outgoings incurred by the Lessor in respect of the matters set out in Clause 7 (iii) (iv) and (v) hereof as certified by the Head of Corporate Finance for the time being of the Lessor (whose certificate shall be conclusive and binding) such payments to be made on demand" (6(ii)). And there is a similar covenant in respect of payment of the Lessor's insurance costs".

23. Clause 7 sets out the Lessor's (the council's) obligations towards the tenant:

"7. The Lessor hereby covenants with the Lessee as follows:

..(iii) the Lessor will repair maintain decorate and renew and may at its discretion carry out improvements to:

(a) the mainstructure and exterior of the Property and in particular the structural elements of…the roof external doors window frames…and rainwater pipes of the Property;
(b) the…water pipes drains and electric cables and wires in under and upon the property and enjoyed or used by the Lessee in common with the owners and occupiers of one or more of the other flats…
(c) the main entrance passages…of the Property…and those common areas marked blue on the said plan so enjoyed or used by the Lessee in common as aforesaid…

(iv) That (subject as aforesaid) the Lessor will …as far as practicable keep the forecourt paths and other parts adjacent to the Property in good condition.

(v) That (subject as aforesaid) the Lessor will so often as it considers necessary cleanse and decorate the main structure and exterior of the Property and the main entrances passages landings and staircases thereof."

4. Legal Framework

24. The following description of the legal framework was set out, in provisional form, in our post-hearing directions. The parties were invited to comment. Only the council

did and only in relation to the law concerning leaseholder rights to summaries of service charge demands.

Service charges

25. Section 19(1) of the Landlord and Tenant Act 1985 ("1985 Act") provides that the costs to be taken into account in determining a service charge are limited to those costs that are "reasonably incurred". Further, where the costs relate to the provision of services or carrying out of works, they are only to be taken into account to the extent that they are of a "reasonable standard". Section 19(1) says "the amount payable shall be limited accordingly". By section 26, these rules apply to a tenant of a local authority if the tenant has a "long tenancy". Mrs Watkins has a long tenancy.

26. Section 21 of the 1985 Act, as it applies in relation to Wales, empowers a tenant, in writing, to require the landlord to supply a written summary of the costs to which a service charge relates. Where the "relevant accounts" are made up for periods of 12 months (as they are in Mrs Watkins' case), section 21 empowers a tenant in writing to require the landlord to supply a written summary of the service charge costs incurred in the last service charge accounting period.

27. Section 27A contains the jurisdiction (legal powers) of the tribunal. It provides that an application may be made to the tribunal for it to determine certain matters including:

- A determination whether a service charge is payable and, if it is,;
- The amount which is payable.

28. The tribunal has jurisdiction whether or not a service charge has been paid (section 27A(2)). A tribunal has no power to make a service charge determination in respect of a matter which has been agreed or admitted by the tenant. However, section 27A(5) states "the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment".

Limitation (whether an action is out-of-time)

29. Section 5 of the Limitation Act 1980 provides that an "action founded on simple contract [a lease is a form of contract] shall not be brought after the expiration of six years from the date on which the cause of action accrued". In this case, by the time Mrs Watkins made her application to the tribunal more than six years had passed since a service charge demand was made in respect of the 2006/7 guttering works and the 2008 path and gate works. However, in this application Mrs Watkins does not bring an action as such.

30. In *Parisssis v Blair Court (St John's Wood) Management Ltd* [2014] UKUT 0503 (LC) the Upper Tribunal decided that section 5 of the 1980 Act did not prevent a tribunal from considering an application in respect of services charges where more than six years had expired since the relevant demand. However, the Upper Tribunal also pointed out that if, on such an application, a tribunal decided a tenant had paid more than was properly due the tenant's right to recover would be an action for restitution. Generally, a six year time-limit also applies to restitutionary actions.

31. In the light of the above, it may in fact be the case that, even if Mrs Watkins obtained a determination from the tribunal that she was effectively overcharged for the 2006/07 guttering works or the 2008 path and gate works, she will not have the legal right to recover an overpayment. But that is not a matter before this tribunal.

Responsibility for drains

32. Since October 2011, the law has generally made water companies responsible for maintaining "lateral drains" (see the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 and the scheme made by the Welsh Ministers under those Regulations).

33. A lateral drain is that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates. Drains within the curtilage remain the responsibility of the landowner. Generally, the curtilage of a building i*s* 'the ground which is used for the comfortable enjoyment of the house or building... serving the purpose of the house or building in some necessary or reasonably useful way' (*Sinclair-Lockhart's Trustees v Central Land Board* (1951)).

Conclusions

Issue (a) – whether Mrs Watkins was informed that she would not be required to pay for the 2006/7 path and gate works

34 On the evidence before us, we are unable to find that council officials informed Mrs Watkins that she would not be required to pay for the earlier path and gate works. We do not mean to suggest she has been dishonest in any way. We think she is likely to have misunderstood a conversation or other communication with officials about charges for the work. If the council were to waive charges we think they would so in writing, given their financial responsibilities to ratepayers, and there is no written evidence that they did. Accordingly, we do no need to consider the legal consequences of any commitment not to charge for these works.

Issues (b), (c) and (e) – whether the earlier path and gate costs were reasonably incurred and of a reasonable standard

35. We find that the 2007 path costs were reasonably incurred and of a reasonable standard. The costs themselves were, in the Tribunal's opinion, in line with market expectations and therefore reasonably incurred.

36. We find the path works were of a reasonable standard given that Mrs Watkins did not complain about water pooling until some seven years after the works were done. This shows that the path functioned effectively for at least eight years. Otherwise, Mrs Watkins would have complained about it before she did. Accordingly, we find the path works were done to a reasonable standard.

37. We find that the 2007 gate costs were not reasonably incurred. Within a relatively short period of time after the works were done, Mrs Watkins wrote to the council arguing the new gate was unnecessary because the old one had nothing wrong with it. As set out in the factual background section above, she repeated that argument on a number of occasions. The council never responded to any of these queries. The council now say they have not retained records relating to the work but they do not say when they were destroyed.

38. If the old gate had been defective in some way, we are sure the council would have said so in response to one of Mrs Watkins' earlier queries, the first of which was made in September 2008. We think it is more likely than not that, at that point, the records were still retained. That would be in line with normal local authority practice, in our view. We therefore find that the gate costs were not reasonably incurred so that, under section 19 of the 1985 Act, Mrs Watkins was not liable to pay her share of the costs.

Issue (d) & (o) – whether the lease authorised the council to charge for path-related works

39. The council had the right to charge for the path works. Through clause 7(iii)(c) they had power to charge for renewing the path and, through clause 7(iv), to charge for keeping the path in good condition. They also had the power to charge for the 2014 ARC soakaway. We think wires became crossed when the parties communicated about an overhanging tree. In informing Mrs Watkins she had no right to the front garden, the council must have meant she had no right herself to cut down the tree in the front garden. The council's tree letter has no bearing on the parties' rights and obligations under the lease.

Issues (f) & (h) - limitation

40. The limitation questions raised by this application are effectively dealt with by the Upper Tribunal's decision in *Parisssis (s*ee paragraph 29 above). The fact that an action in the courts might be time-barred does not remove the tribunal' jurisdiction.

Issue (h) – whether the 2007 gutter replacement costs were reasonably incurred and of a reasonable standard

41. We find that these costs were reasonably incurred. It has not been disputed that the gutters needed replacing and the sums charged were in line with market expectations.

42. However, we find that the works themselves were not done to a reasonable standard. We note that repairs to address a leak were first done on 8th January 2007 (albeit outside no.24 but to guttering that was a unit-wide feature). This was only some 10 months after installation. As the factual background section of this decision shows, further repairs were carried out in 2009 and 2010.

43. We would expect competently installed guttering to remain in good condition for approximately three years after installation. Following this, normal wear and tear would call for periodic maintenance including replacement of worn rubber gaskets. The timeline of repairs for this guttering leads us to conclude the works were not done to a reasonable standard.

44. Under section 19 of the 1985 Act, a leaseholder is only liable to pay service charges in respect of works "to the extent that" they are of a reasonable standard. The whole of the costs are not to be excluded simply because, in some respects, the works are not of a reasonable standard.

45. We note that the subsequent repairs themselves were relatively small-scale. From this we conclude that the defects to the guttering, as originally installed, were themselves relatively small-scale and limited to defects in some of the gutter joints. A

major overhaul was not required nor did significant portions of the guttering need to be replaced. However, we remind ourselves that effective jointing is integral to effective guttering and a relatively small-scale defect can cause significant inconvenience for a householder. Taking a broad view, we conclude that the extent to which the guttering works were not of a reasonable standard should be reflected in a 15% reduction in the amount charged to Mrs Watkins.

Issue (i) – whether costs of gutter repair works were reasonably incurred or related to works of a reasonable standard;

46. For service charge year 2008/09, Mrs Watkins received a demand of £13.46 for repair of a gutter joint and, for 2009/10, a demand for £25.81 for clearing leaves from gutters and a gutter joint repair.

47. We decide that the charge for 2008/09 related to costs that were not reasonably incurred because we find the repair was needed due to the original guttering works not being of a reasonable standard (as just explained above). Mrs Watkins was not liable to pay this charge under section 19 of the 1985 Act.

48. The 2009/10 charge of £13.46 was for repair of a gutter joint (22/1/10) (see the 8th August 2010 notice sent to Mrs Watkins by the council). This cost was in line with market expectations. We are not able to find, on the evidence, that these works were attributable to the defects in the guttering as originally installed. Applying our findings concerning normal wear and tear of guttering (see paragraph 42 above), we decide it is more likely than not that the works were needed due to normal wear and tear. As a result, we find the costs were reasonably incurred. We also find that the repair work was done to a reasonable standard. There is no evidence that the repair failed. And so Mrs Watkins was liable to pay this charge.

Issue (j) – whether gutter clear-out costs were reasonably incurred

49. We find that costs incurred by the council in clearing out gutters were reasonably incurred and the works were of a reasonable standard. In fact, it seems all these charges have been waived by the council apart from a charge of £3.73 for works in 2008. Gutters need to be cleared out regularly and there is no evidence on which we could find the blockage occurred due to some default on the part of the council. The amount of the charge is in line with market expectations.

Issue (k) whether the costs of attaching gutters and a downpipe to Mrs Watkins' shed were reasonably incurred

50. The council argued in their response to the tribunal's directions that gutters and a downpipe would not normally be attached to a shed the size of Mrs Watkins'. As we observed above, a council memo. arguably suggests the shed originally had guttering. However, that may be explained by the council official was simply recording Mrs Watkins' recollections.

51. In the tribunal's opinion, it would not be unusual for a shed of this size to be constructed without guttering. However, the council did erect guttering once Mrs Watkins raised it as an issue. In so doing, they were not, we find, remedying an earlier unreasonable failure to attach guttering (since the absence of guttering in

sheds of this size are not unusual). For that reason, we find these costs were reasonably incurred (there is no dispute as the effectiveness of the guttering or the reasonableness of the amount charged for works of this type). Mrs Watkins was liable to pay her share of the costs of attaching guttering to the shed.

Issue (l) and (n) – whether costs relating to maintenance contract SC11 were reasonably incurred

The evidence

52. The evidence as to the works that were actually done to the three other properties in the block of which No. 25 forms part is meagre. We have been supplied with documentary evidence that a painter worked for 31 hours on 21 properties that included Mrs Watkins'. And on our inspection it appeared that painting had been carried out relatively recently, to No.25 at least. .

53. Our inspection was of No.25 and we had no authority to inspect other properties within the block. And so we did not inspect or take photographs of those other properties (in any event, the heavy rain meant a visual inspection would have been needed to gather reliable evidence as to whether surfaces had been painted or stained and whether doors and windows were of a certain age). We did, however, issue post-hearing directions that made it very clear that there was an issue as to whether staining and painting had been carried out, and doors and windows installed, to the whole block, as the council claimed, under contract SC 11. We have set out above the council's response. They supplied no photographic evidence (or informed the tribunal they had tried and failed to obtain photographic evidence), no evidence from their own surveyors and no direct evidence as to what works were carried out on the block.

54. In a letter dated 6th January 2015, the council informed Mrs Watkins that, during works of the type carried out under contract SC11, the council's Clerk of Works oversees the contract and carries out regular site inspections. And, when the works are completed, the Clerk of Works undertakes a final inspection to confirm the works have been completed.

The final costs charged under contract SC11

55. The final revised February 2014 Schedule of Works indicated the costs of the works were:

> (a) for the whole block, applying flexigloss to metal fixtures and washing down fascia and soffit (£180.15);
>
> (b) replacing upvc windows for no's 22 (£185) and 25 (£185);
>
> (c) replacing doors and frames for no's 22 (£456.75), 23 (£456.75), and 25 (456.75);
>
> (d) applying flexigloss to doors, frames and windows for no's 22 (34.36 plus 13.52), 23 (34.36 plus 13.52 plus 3.00), 24 (13.52 plus 17.18), and 25 (34.36 plus 13.52);

(e) staining for no's 22 (99.77), 23 (98.79), 25 (81.02).

Conclusions

56. After making their initial service charge demand, the council removed the costs of staining at No. 25 because the evidence provided by their contracts officer that staining was done was "not completely satisfactory" and they could not "evidence" it. On 26th March 2012, the council wrote to Mrs Watkins stating that her window had been incorrectly identified as being hardwood and "this error has now been corrected". But the charge for replacing a window was not removed until 8th May 2014 when the "principal officer for the contract" advised that the window had not in fact been replaced.

57. Mrs Watkins wrote by hand on a letter that bears the date 26th March 2012 "nothing has been charged for has been done except for the renewal of three doors that didn't need renewing" (although the final schedule of works says two doors were replaced). It is not clear when Mrs Watkins wrote these comments. In that letter, the council said the doors were being renewed to "bring them up to the Welsh Housing Quality Standard".

58. Obviously, works must in fact have been done in order for their costs to be reasonably incurred. Our conclusions in this respect are:

(a) the flexiglossing referred to in the Schedule of Works was done. On our inspection, the paint appeared relatively new for No. 25 and the council supplied evidence that a painter had been on site during February 2012. From this, we infer that the four properties in the block were painted with flexigloss as the council have claimed;

(b) two doors were replaced, as Mrs Watkins effectively accepted in her hand-written additions to the letter referred to above;

(c) on the balance of probability, we conclude that the upvc window to no.22 was not replaced. The final schedule of works indicated that both no's 22 and 25 had their windows replaced but, subsequently, the council adjusted Mrs Watkins' service charge bill because her window charge was included in error. This shows the council's contract checking procedures are not always accurate. When we take that error into account alongside the absence of any direct evidence from the council that no. 22's window was replaced, Mrs Watkins has persuaded us that, on the balance of probability, no windows were replaced. We also take into account Mrs Watkins' acceptance that two doors were replaced. If she were dishonest (which she is not) she would probably have denied everything;

(d) on the balance of probability, we conclude that staining was not done to any of the properties in the block. The council concede they cannot evidence that staining was done to no.25. In our view, it follows they do not have evidence that staining work was done to the other properties on the block. If they did, they would have supplied it in these proceedings.

59. Mrs Watkins argues the doors did not need replacing. The council say they were replaced to bring them up to the standard expected by the Welsh Government's Housing Quality Standard. In our view, works done to ensure properties meet that standard are reasonably incurred. The costs themselves are not challenged as being out of line with market rates.

60. On the basis of the above findings, Mrs Watkins' service charge liability under contract SC11 is one quarter of:

(a) the costs of applying flexigloss to block-wide items, including washing down fascia and soffit (£180.15); and

(b) replacing doors and frames for no's 22 (£456.75) and 23 (£456.75); and

(c) applying flexigloss to doors, frames and windows for no's 22 (34.36 plus 13.52), 23 (34.36 plus 13.52 plus 3.00), 24 (13.52 plus 17.18), and 25 (34.36 plus 13.52); and

(d) preliminaries adjustment of 19.8289% for items (b) and (c) = £216.30

(e) 10% administration fee for the above items of £148.73 (10% of 1487.29).

Total =1636.02 divided by four = £409.

Issue (m) whether Mrs Watkins was entitled to withhold payment of the charge for contract SC11

61. Section 21 of the Landlord and Tenant Act 1985 confers certain rights on a tenant to require a landlord to supply a written summary of the costs to which service charges relate. A new form of section 21 was provided for by the Commonhold and Leasehold Reform Act 2002 but, as the council pointed out in their response to our directions, those provisions have not been brought into force in relation to Wales. The right to withhold service charges provided for by section 21A was also added to the 1985 Act by the 2002 Act but, as the council have also correctly pointed out, it has not been brought into force. Accordingly, it cannot assist Mrs Watkins in this case.

Issue (p) – whether the costs of works to install the 2014 ARC drain were reasonably incurred and of a reasonable standard

62. The ARC drain was installed in July 2014. The council write to Mrs Watkins on 11th August 2015, agreeing with her that it had been "unsuccessful". The council also informed her she would be charged for the initial works but not repair works.

63. Given the council's concession, we decide the costs of installing the ARC drain cannot be charged for. Since it was ineffective, the installation works cannot have been to a reasonable standard. We decide that under section 19 of the 1985 Act Mrs Watkins is not liable to pay this charge (for 2014/15). The chargeability of any repair works is not before the Tribunal.

Issue (q) – the manhole cover

64. We conclude the cover was part of a drainage system within the curtilage of Mrs Watkins' property. As a result, it was not something the local water company were liable to repair. It fell within the council's repairing obligations under the lease.

65. During our inspection we observed significant localised flooding in the area of the manhole cover.

66. At the hearing, the tribunal's surveyor member put it to the council officials that the manhole cover was in fact a soakaway drain rather than a gas pipe inspection cover (as had been suggested). The officials agree that the manhole cover was in fact intended to function as a soakaway drain.

67. On the basis that the manhole cover is intended to function as a soakaway drain, it was clearly not working effectively. Since it was installed relatively recently, we concluded the works were not to a reasonable standard and so Mrs Watkins is not liable to pay service charges relating to those costs.

Dated this 12th day of August 2016

E. Mitchell

Chairman