

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**  
**LEASEHOLD VALUATION TRIBUNAL**

Reference: LVT/0016/08/15

In the Matter of Flat 23 Vincent Court, Vincent Road, Cardiff, CF5 5AQ

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

<b>TRIBUNAL</b>	<b>Timothy Walsh (Chairman)</b> <b>Roger Baynham (Surveyor)</b> <b>Juliet Playfair</b>
<b>APPLICANT</b>	<b>Dealswar Investments Limited</b>
<b>RESPONDENT</b>	<b>Mr. Carl Alan Tugwell</b>

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**REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**  
**(AS AMENDED UNDER REGULATION 18(7) OF THE LEASEHOLD VALUATION TRIBUNALS**  
**(PROCEDURE) (WALES) REGULATIONS 2004)**

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The Decision in Summary

1. For the reasons that follow, the Tribunal makes the following determinations:
  - (I) By reason of section 21B(3) of the Landlord and Tenant Act 1985 the Respondent has a statutory right to withhold payment of the material service charges until served with a demand for the payment of those service charges which is accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges which complies with the requirements of the Service Charges (Summary of Rights and Obligations) (Wales) Regulations 2007.
  - (II) The amount of the service charges which are otherwise payable for the material flat for the six years in issue from 2009 to 2014 are £2,726.30.

The parties and their representation

2. The present proceedings concern a dispute over service charges in relation to flat number 23 at Vincent Court, Vincent Road, Cardiff ("the Flat"). The Respondent, Mr. Carl Tugwell, is the leaseholder (but apparently not the occupier) of the Flat. At the hearing he was represented by Mr. John Bower a solicitor with the firm Bean Bower & Co.
3. The Applicant is Dealswar Investments Limited. It owns the freehold reversionary interest in Vincent Court and is accordingly the head landlord. It was represented at the hearing by Mr. Anthony Jacobs of the firm Anthony Jacobs & Co.

## The Estate

4. The Applicant acquired its freehold interest in the relevant estate's land by a conveyance dated 31 May 1961 and, thereafter, what was then known as the Vincent Road Estate was built in around 1962. It comprises two structurally detached buildings.
5. The two structurally detached buildings are defined in the Lease and accompanying plan as "Block 1" and "Block 2" and those definitions are adopted in this decision. Each Block is divided in the lease by lettering, with Block 1 identified by the letters A to D.
6. Each Block has two common staircases with a party wall effectively dividing each Block in two. One half of Block 1 is identified by the letters A and B and the mirror half by letters C and D. One half of a Block is defined as constituting "the Building" for the purpose of the material lease(s).
7. Each Building accordingly has a common staircase and each is three storeys in height and is divided into flats providing residential accommodation only. There are 2 flats per floor on each staircase and so 6 flats in each Building and a total of 24 flats in the two Blocks.
8. The Flat is located on the second floor of Block 1 in the Building identified by the letters C and D (hereafter "the Building" unless the context dictates otherwise). When it was originally demised by lease dated 31 December 1962 ("the Lease") it was known as flat 12 before later being renamed as Flat 23. Indeed, for no obvious reason all of the flats on the Estate were allocated odd numbers and so the 12 flats in Block 1 are numbered 1 to 23.
9. Following the conclusion of the final hearing on 6 April 2016 the Tribunal visited the estate and we were given access to the common staircases in Block 1. During that visit it was clear that the common parts comprising the stairwell to the Building had not been the subject of significant maintenance for some time. It was in poor decorative order. For example, the stairs were missing tread in places, on the landings there were missing floor tiles and the handrails were rusted and badly in need of repainting. A number of lighting bulbs also required replacement.

## The Claim and Procedural History

10. By proceedings issued on 12 May 2015 the Applicant sought to recover a sum for the alleged arrears of service charges relating to the Flat. The sum sought was variously pleaded at £2,849.84 and £2,825.84. No breakdown of the particulars for the service charges claimed are included in the Particulars of Claim.
11. A Defence was filed denying that the Respondent was indebted to the Applicant at all. The Defence is also not a model of clarity but reads as follows:
  - “1. Service charge reminder of 6<sup>th</sup> May 2010 referred to service charge due on 25<sup>th</sup> December 2010 (i.e. 7 months in advance)*
  - 2. Further service charge demand of 25<sup>th</sup> December 2010 issued in respect of 25<sup>th</sup> December 2010 (i.e. double up with (1) above).*
  - 3. Insurance premium shown on RSA documentation does not tie up with demands as at 25<sup>th</sup> December 2010. No further renewal documentation since has ever been provided despite repeated requests.*

4. *No service charge accounts have ever been provided.*
  5. *The Defendant has no lease despite repeated requests for a copy.*
  6. *To the Defendant's knowledge no ground rent is payable and therefore the claim is incorrect. There cannot be any arrears.*
  7. *Defendant wrote to Claimant on 2<sup>nd</sup> November 2011 setting out problems with maintenance and refusing to pay service charge because of the matters referred to in (1) to (6) above. This was responded to by the Claimant's agent on 2<sup>nd</sup> December 2011 but did not address the issues.*
  8. *Further demands after December 2010 are all unsubstantiated and therefore in dispute.*
  9. *Value of claim and amount claimed on claim form does not tie up.*
  10. *For all above reasons Defendant denies that he is indebted to Claimant or at all"*
12. At the hearing before this Tribunal it was conceded for the Respondent that not all of the issues raised in the Defence were material to the questions for determination in the claim.
13. By order dated 31 July 2015 Cardiff County Court transferred "*the question of determination of the service charge*" to this Tribunal. The Transfer of proceedings to the Leasehold Valuation Tribunal is made pursuant to paragraph 3 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 which provides that:
- "3(1) Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court –*
- (a) may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question, and*
  - (b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any proceedings pending the determination of that question by the leasehold valuation tribunal, as it thinks fit..."*
14. In our view the order of the County Court was so wide that it transferred the broad question of the service charges generally to this Tribunal such that this Tribunal should determine both the reasonableness but also the recoverability of the service charges. The parties concurred with this.
15. That stated, this Tribunal is limited to a consideration of the claim for service charges. Wider concerns or disputes which the Respondent may have with the Applicant do not come within our jurisdiction unless they bear on this issue. By way of example, unless a present lack of maintenance observed at a site inspection is relevant to the service charges in dispute, a tenant's pleaded grievances about the condition of the common parts today will be of limited relevance.
16. In terms of the procedural background, by order of the Procedural Chairman the Leasehold Valuation Tribunal gave detailed case management directions on 7 August 2015 but the parties failed to fully or adequately comply with those directions. Indeed, they failed to attend or accommodate any inspection of the material premises upon the Leasehold Valuation Tribunal's attendance at the premises on 12 November 2015. As a result the initial hearing of this matter on that date resulted in limited progress and the issue of further case management directions. As already noted, the matter was relisted for hearing on 6 April 2016.

17. By the Lease the Applicant demised to Arthur and Rosa Treseder (as the original tenants): *“FIRST ALL THAT the flat on the Estate numbered 12 and forming part of and being on the second floor of block numbered 1 being a pair of blocks with a common staircase (hereinafter called “the Building”) numbered C and D on the said Plan No. 1 which said flat is more particularly described in the Second Schedule and delineated on Plan No. 2 annexed hereto and thereon edged red TOGETHER with the easements rights and privileges mentioned in the Third Schedule hereto subject as therein mentioned SECONDLY ALL THAT the bin area delineated on the said Plan No. 2 and thereon coloured blue...”*. That definition is then repeated in the Second Schedule which adds detailed particulars of what the demised premises include.

18. Clause 2(b) of the Lease provides that:

*“2(b) The Tenant will during the continuance of the term hereby granted pay to the Lessor the following sums without any deduction whatsoever on the twenty-fifth day of December in every year namely:-*

- (i) one equal twenty-fourth part of the Estate Charge to be ascertained in manner hereinafter appearing*
- (ii) one equal one-sixth part of the Maintenance Charge to be ascertained in manner hereinafter appearing*
- (iii) a sum (hereinafter called “the Insurance Charge”) equal to one sixth part of all such moneys as the Lessor may from time to time pay for insuring and keeping insured the Building against loss or damage by fire or other cause in accordance with the covenants hereinafter contained together with a due proportion of the costs charges and expenses incurred by the Lessor in claiming receiving and laying out any moneys receivable under any such insurance such due proportion to be estimated by reference to the amount of such moneys expended upon the premises hereby demised”*

19. Clauses 5(1) and (2) of the Lease add the following:

*“5(1) The costs charges and expenses (herein called “the Maintenance Charge”) paid or incurred by or on behalf of the Lessor in connection with the Building and the land on which it stands (other than the appropriate part of which forms the measure of the Insurance Charge) in the observance and performance of the covenants by the Lessor herein contained (other than that for quiet enjoyment) or of the obligations imposed on the Lessor hereunder or so incurred in the supervision management or control of the Building (other than the cost of collection of rent) or any part thereof or under or in pursuance of any lease or tenancy agreement in respect of the Building (other than the cost of collection of rent) or any part thereof including the cost of calculation thereof shall be determined as at the thirtieth day of November in every year in respect of the year then last past by the Chartered Accountants for the time being of the Lessor who shall give to the Lessor a certificate in writing of the aggregate amount thereof*

*(2) The costs charges and expenses (hereafter called “the Estate Charge”) paid or incurred by or on behalf of the Lessor in connection with the Estate other than any of the buildings comprising the said blocks of flats thereon and the land upon which any of such buildings stand in the observance and performance of the covenants by the Lessor herein contained or of the obligations imposed on the Lessor hereunder or so incurred in the supervision*

*management and control of the Estate other than as aforesaid including the cost of calculation thereof shall be determined as at the thirtieth day of November in every year in respect of the year then last past by the Chartered Accountants for the time being of the Lessor who shall give to the Lessor a certificate in writing of the aggregate amount thereof"*

20. Significantly, clause 5(3)(i) adds that *"if at any time doubt arises as to whether a cost charge or expense falls to be included in the Maintenance Charge under this or any other lease or in the Estate Charge the same shall be included in the Estate Charge"*.

21. Clause 5(5) also provides the following:

*"5(5) The Lessor shall notify the Tenant in writing on or before the thirtieth day of November in every year or so soon thereafter as shall be practicable of the amounts of the Maintenance Charge and the Estate Charge so certified in respect of the year then last past and of the proportion thereof payable by the Tenant pursuant to the provisions hereinbefore contained"*.

22. Broadly, the combined effect of the foregoing is that the tenant covenants to pay one twenty-fourth part of the Estate Charge on 25 December each year which is for the year up to the preceding 30 November together with one-sixth part of the Maintenance Charge for the preceding year to 30 November and one sixth of the Insurance Charge.

23. The relevant Lessor's covenants are contained in Clauses 4(c), (d) and 4(e) of the Lease.

24. At Clause 4(c) the Lessor covenants to insure the Building and, whenever required, to produce to the Tenant the policy of insurance and the receipt for the last premium. Clauses 4(d) and (e) then provide as follows:

*"4(d) Subject to the tenant having paid his proportion of the Maintenance Charge then last payable the Lessor will at all times during the term hereby granted repair and maintain in good repair and condition:-*

- (i) the whole of the roof of the Building above and including the ceiling joists lying immediately above the ceilings of the second floor flats*
- (ii) the whole of the foundations of the Building including and below the concrete base lying immediately below the floors of the ground floor flats*
- (iii) the concrete bases lying immediately below the floors of the first and second floor flats in the Building*
- (iv) the entire external walls of the Building and everything attached to the outside thereof (but not the glass in the windows of any flat therein) and the party wall (if any) between the Building and the adjacent pair of blocks of flats having a common staircase but excluding in the case of any wall the surface plaster or other finish on the interior of any flat*
- (v) all load bearing walls (as to structural but not decorative repair inside any flat and excluding the surface plaster or other finish on the interior of any flat) in the Building*
- (vi) such part of all heating water and other pipes sewers drains tubes meters and wires flues ventilators radiators and cisterns comprised in on or beneath the Building as are used in common by more than one occupier of the Building*
- (vii) all other the parts of the Building as are not comprised in any of the flats thereon or used exclusively by the occupier of a single flat therein*

*And will so far as practicable keep clean and tidy and reasonably lighted the main entrance hall passages landings and staircases and such other parts of the Building as are enjoyed in*

*common by more than one occupier of the Building including the cleaning of all windows thereto And will once in every three years paint with two coats of good oil paint or best quality synthetic paint all outside wood and metal work comprised in or annexed to the Building And will once in every seven years (or more often if occasion shall require) paint with two coats of good oil paint or best quality synthetic paint all the wood iron and other parts of the interior of the Building not comprised in any flat or the responsibility of the tenant of any flat usually or which ought to be painted and grain varnish distemper wash stop whiten and colour all such parts as are usually or as ought to be so treated*

*4(e) Subject to the Tenant having paid his proportion of the Estate Charge then last payable the Lessor will at all times during the term hereby granted repair and maintain in good repair and condition:-*

*(i) all the heating water and other pipes sewers drains tubes and wires on the Estate not comprised in on or beneath any block of flats and used in common by more than one occupier of the Estate which are vested in the Lessor*

*(ii) all paths entrances and driveways (until the same shall be taken over by the Local Authority) fences and walls on the Estate other than buildings*

*And will tend and keep in good order and condition the grounds of the Estate and lay out all such parts thereof as it shall think fit in grass lawns which it will keep properly mown and rolled”*

25. By a Deed of Variation dated 30 March 2007 the Applicant and the personal representatives of Rosa Treseder agreed to vary the Lease. That Deed substituted a term of 189 years for the original term of 99 years but is not otherwise material.

#### The Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987

26. A “service charge” is defined in section 18 of the 1985 Act:

*18(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—*

*(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and*

*(b) the whole or part of which varies or may vary according to the relevant costs.*

*(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

*(3) For this purpose—*

*(a) “costs” includes overheads, and*

*(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

27. Under section 19 of the Act a statutory safeguard is provided.

*19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*

*(a) only to the extent that they are reasonably incurred, and*

*(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*

*and the amount payable shall be limited accordingly.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

28. Section 20B of the 1985 Act imposes a statutory time limit on the recovery of service charges:

*20B (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*

*(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

29. Section 21B(1) of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of the tenant in relation to the service charges. These are contained in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 (SI 2007/3160 (W 271)). By section 21B(3) it is provided that: “A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand”. Once section 21B(1) has been complied with the service charge then becomes payable.

30. In addition to the provisions of the 1985 Act, further statutory requirements are contained in sections 47 and 48 of the Landlord and Tenant Act 1987 but at the initial hearing of this matter the Respondent conceded that there had been adequate compliance with the requirements of those sections.

### The Applicant’s Case

31. The Applicant produced service charge accounts for each of the 6 years from 2009 to 2014 inclusive in the following amounts:

- (i) December 2009 (for the period to 30 November 2009) - £415.72;
- (ii) 28 December 2010 (for the period to 30 November 2010) - £450.92;
- (iii) 28 December 2011 (for the period to 30 November 2011) - £442.58;
- (iv) 20 December 2012 (for the period to 30 November 2012) - £550.78;
- (v) 18 February 2014 (for the period to 30 November 2013) - £535.51;
- (vi) 21 January 2015 (for the period to 30 November 2014) - £454.33.

32. As at 21 January 2015 the total arrears for those six demands totalled £2,849.84. This is one of the figures claimed in the Claim Form. All of the demands refer only to “estate expenditure” totals and insurance premiums. What is demanded on each occasion is one twenty-fourth of the combined “estate expenditure” and insurance. No distinction is made between “Estate Charges” and “Maintenance Charges” nor to the differing fractions that are

prescribed in the Lease for the recovery of Estate Charges on the one hand and Maintenance and the Insurance Charges on the other.

33. Whilst this is not an issue in relation to the Insurance Charge (which can be split easily) it is more obviously a problem in relation to the Maintenance Charge as it is not self-evident which of the heads of expenditure relate to which "Building" or Block.
34. At pages 30 to 41 of the hearing bundle were breakdowns of the expenditure for each year but those breakdowns do not differentiate between Estate Charges and Maintenance Charges.
35. It is noteworthy that in the Respondent's written submission to this Tribunal dated 4 November 2015 he was in agreement with the Applicant's historic basis for billing, asserting there that: "*The Respondent is responsible for one twenty-fourth part of the insurance cost and service charge cost in respect of the property*". At the hearing on 12 November 2015, the Respondent also conceded that both accountant's fees and electricity charges were reasonable save for a sum for electricity of £203.21 dating from 27 January 2010.

#### The Form of the Demands and the Allocation of the Charges

36. For each year in issue the Maintenance and Estate Charges were certified by Howard J. Weare & Co. Chartered Accountants and we are satisfied that the certification so provided was sufficient to comply with the terms of the Lease.
37. The more significant issue, in relation to the demands, is section 21B of the 1985 Act. In a one page statement dated 26 August 2015 from Mr. Anthony Edwards, a director of the Applicant, he asserted that the service charge demands had been made in accordance with section 21B. However, none of the service charge demands in the bundle were in the form prescribed by the 2007 Regulations and nor was the summary exhibited to the later statement from Mr. Edwards dated 20 November 2015 (at Exhibit 3).
38. Regulation 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 expressly provides that the summary of rights and obligations which must accompany a demand for the payment of a service charge must contain a prescribed summary in both English and Welsh. The summary used by the Applicant here was in English only. As a result section 21B(3) of the 1985 Act provides that the Respondent may withhold payment of the service charge.
39. The Respondent was not prepared to concede the point at the hearing and in the circumstances the Respondent has a statutory right to withhold payment until he is appropriately served. That was a statutory right that he was, of course, entitled to exercise when the County Court proceedings were issued although it is not part of his pleaded Defence in those proceedings. Insofar as it is necessary the Applicant will, no doubt, simply proceed to re-serve the necessary demands and notices.
40. The other significant overarching issue between the parties that fell within the remit of this Tribunal was a dispute over the allocation of expenditure to each flat. The requirements of the Lease have already been explained above. It requires the tenant to pay one twenty-fourth of the Estate Charge and one-sixth of the Maintenance Charge. The one twenty-fourth part is obviously adopted for those heads of expenditure which should be shared

between the 24 flats in the estate. The one sixth part is adopted for expenditure relating to the six flats that share one of the four common staircases in a "Building". The difficulty here is that the Applicant has always split all expenditure equally between all 24 flats.

41. The Applicant's position is that since it has always split the expenditure across all 24 flats it should be permitted to do so for the Flat and therefore the total amounts are said to be correct as claimed. It was submitted on the Applicant's behalf that the Respondent had not challenged this basis of calculation historically and that no other tenant had ever done so either. The Applicant pointed, also, to the Respondent's initial written submission to this Tribunal which had expressly adopted one-twenty fourth as correct. Although not articulated in these terms, the thrust of Mr. Jacobs' submission was that some form of estoppel by convention may have arisen.
42. Mr. Bower for the Respondent conceded that he had initially adopted the approach that the Respondent was responsible for one-twenty fourth part of all expenditure but he now resiled from that and maintained that his client should only pay for expenditure falling within the definition of Maintenance Charges where that related to the Respondent's "Building".
43. What was expressly conceded by the Respondent, however, was that where there was any historic expenditure which could not clearly be allocated as a Maintenance Charge to an identified "Building" then that should be treated as an Estate Charge. That concession was made in light of Clause 5(3)(i) of the Lease. Moreover, that concession extended to any uncertainty even if it stemmed only from the limitations of the available paperwork. This decision proceeds on the basis of that concession.
44. On the more general question of whether all expenditure should be treated as, in effect, an "Estate Charge", we were unable to accept the Applicant's submission that, in the case of this tenant, some form of estoppel arose.
45. We did not receive the benefit of detailed submissions on the law but accept the following. Where two parties act, or operate a contract, each to the knowledge of the other on the basis of a particular belief, assumption or agreement (for example about a state of fact or of law, or about the interpretation of a contract) they may become bound by that belief, assumption or agreement. Any such estoppel (generally known as estoppel by convention) requires that the parties acted on the basis of that shared apprehension and the court (or, in this case, Tribunal) will only give effect to any agreed assumption if it would be unconscionable not to do so.
46. Here, however, the Respondent apparently made one isolated payment when he first acquired the Flat and has not done so thereafter. The fact that he paid a previous service charge demand (even if it was calculated as one twenty-fourth of all expenditure) would not, in our view, provide a basis for departing from express terms of the Lease or for contending that this tenant was estopped from declining to pay for works for which he is not contractually liable. A single payment of one demand can hardly be said to give rise to a convention upon which the parties have both acted. The Respondent has not paid the demands for six years and this is, in reality, a case of a landlord unilaterally but mistakenly failing to apply the terms of the lease.

47. We would add that the foregoing conclusions should not be taken to create a precedent or to otherwise indicate the likely result in relation to the other 23 flats as each case would be fact specific.

### The Service Charges

#### 2009 - £415.72

48. The demand for 2009 totalling £415.72 per flat was based on the following expenditure as summarised at page 41 of the bundle:

		<b>Amount:</b>	<b>(Sub) Total:</b>
<b>Electricity</b>			
27 January 2009		£63.15	
24 April 2009		£84.54	
24 July 2009		£65.77	
29 Oct. 2009		£70.84	
			<b>£284.30</b>
<b>Repair and Replacement</b>			
17 January 2009	Roof repair	£525.00	
9 March 2009	Lock repair	£108.11	
16 March 2009	Manhole replacement	£85.00	
23 March 2009	Insurance claim	-£525.00	
7 July 2009	Tile repair	£510.00	
5 August 2009	Roof repair	£455.00	
7 September 2009	Roof repair	£745.00	
16 September 2009	Door repair	£30.00	
10 October 2009	Roof repair	£820.00	
17 November 2009	Roof repair	£120.00	
17 November 2009	Roof repair	£135.00	
7 December 2009	Glass replacement	£116.15	
			<b>£3,124.26</b>
<b>General Estate Charges</b>			
30 November 2009	Accountants Certificate	£207.00	
30 November 2009	Management – Toms & Toms	£1,000.00	
30 November 2009	Management – Wm Bradley & Wallace	£1,250.00	
			<b>£2,457.00</b>
<b>Insurance</b>			
25 December 2009			<b>£4,111.81</b>

49. In respect of the electricity charges, these are incurred in connection with “the Building” rather than the Estate and as such fall within the definition of the Maintenance Charge. It is apparent, however, that the bills that are raised relate to the metered supply for the whole of Block 1. In order to arrive at an appropriate one-sixth figure it was accordingly necessary to identify the invoices for Block 1 and then divide them by 12. The Respondent conceded that the electricity charges were otherwise reasonably incurred and reasonable in amount for 2009 and all of the later years in issue. For 2009 this exercise produced the following amounts:

- £40.92
- £59.90
- 45.15
- £42.84

50. Splitting the total of £188.81 between the two "Buildings" in Block 1 gives a figure of £94.40 and one sixth of that sum is £15.73.

51. For the charges under the heading "Repair and Replacement" the position is as follows. The Respondent accepted that all of the expenditure for the works was recoverable for the purposes of section 19 of the 1985 Act. I.e. He accepted that the costs had been reasonably incurred, were reasonable in amount and that the works should be taken to have been to a reasonable standard.

52. Our determination in relation to the "repair and replacement" costs was largely the result of concessions or agreement between the parties. However, references in the tables that follow to "common ground" between the parties in the allocation of expenditure relate to the strict contractual position under the Lease. The Tribunal does, of course, acknowledge that the Applicant's primary position (addressed above) was that all expenditure was recoverable as an Estate Charge by reason of a long-standing convention.

<b>Repair and Replacement</b>			
17 Jan. 2009	Roof repair	£525.00	This roof repair appeared to relate to a 23 March insurance claim and so did not form part of the service charge.
9 Mar. 2009	Lock repair	£108.11	It was common ground that this was recoverable as a Maintenance Charge.
16 Mar. 2009	Manhole replacement	£85.00	It was common ground that this was recoverable as a Maintenance Charge.
23 Mar. 2009	Insurance claim	-£525.00	
7 July 2009	Tile repair	£510.00	It was common ground that this should be treated as an Estate Charge.
5 Aug. 2009	Roof repair	£455.00	It was common ground that this should be treated as an Estate Charge.
7 Sept. 2009	Roof repair	£745.00	The Applicant conceded that this was irrecoverable as it should form a Maintenance Charge for a different Building.
16 Sept. 2009	Door repair	£30.00	It was common ground that this should be treated as an Estate Charge.
10 Oct. 2009	Roof repair	£820.00	It was common ground this was recoverable as a Maintenance Charge.
17 Nov. 2009	Roof repair	£120.00	This was not pursued as it may have been covered by a later insurance claim.
17 Nov. 2009	Roof repair	£135.00	It was common ground that this was recoverable as a Maintenance Charge.
7 Dec. 2009	Glass replacement	£116.15	See the following paragraph. For the reasons that follow, this is recoverable as a Maintenance Charge.

53. As regards the sum of £116.15, this was supported by an invoice from Wright Glass. It refers to the replacement of a front uPVC window and adds "*Re: Mr. Parker 17 Vincent Court*". The Applicant states that it would not have paid for the replacement of glass at number 17 and that this must relate to the common parts in the material building (Flat 17 is one of the 6 flats that share the common staircase with Flat 23). It is, of course, possible that work was done at Flat 17 and should have been recharged entirely to that tenant but, in our view, that is improbable and on balance we consider that the Applicant's explanation is the most likely explanation. As a result, this is an expense that forms part of the Maintenance Charge.
54. All of the repairs that fall within the definition of a Maintenance Charge in the above table related to Block 1 but it was not always clear whether they related to the material Building (C/D) in which the Flat is located or the other half of Block 1 (A/B). Where that is not clear it is necessary to split the expenditure in half to share it between the two buildings in Block 1 before splitting it as the one-sixth liability for which the Respondent must pay. This is necessarily something of a "rough and ready" approach but is the only way of doing broad justice between the parties. The alternative would be to disallow that expenditure altogether but that was not advocated on the Respondent's behalf. To disallow Maintenance Charges because they could not clearly be split between the two Buildings in Block 1 would also be unrealistic for work (like roof repairs) which may well have related to the whole Block. Moreover, as will be apparent from what follows, the Respondent's liability for such service charges (i.e. Maintenance Charges referable to the whole of Block 1) is negligible and totals only £78.33 for all six years in issue.
55. Based on the invoices in the bundle, we are satisfied that the lock repair for £108.11, the roof repair for £135.00 and the glass replacement for £116.15 related to the relevant Building. It was not clear to which part of the Block the manhole repair for £85.00 or the roof repair for £820.00 related and they will accordingly be split between Block 1 (as one-twelfth) rather than the Building (as one-sixth).
56. The accountants' fees were conceded by the Respondent as reasonably incurred and reasonable in amount generally for 2009 and all succeeding years and the Tribunal considers that that concession was properly made having regard to the relatively modest amount of those charges and the evidence confirming certification of the expenditure by the accountants as contained in the bundle.
57. The Respondent did query the management fees and, more particularly, queried why there were two separate charges. One being for "Toms & Toms" and another for "Wm Bradley & Wallace". It was primarily on this basis that the Respondent contended that only half the amount of the management fees claimed should be covered.
58. The Applicant's response was that Toms and Toms were employed to deal with the practical issues involving maintenance of the estate whereas Wm Bradley & Wallace dealt with the clerical administrative side of the estate's management.
59. The combined cost for 2009 was £2,250 per annum which equates to a monthly management fee for each of the 24 flats of £7.81. The Respondent filed no evidence of comparable fees for other estates or managing agents and whilst the estate does not appear to be particularly well maintained today, the challenge to the fees was essentially put on the basis that the fee was simply too high generally and may have involved duplication. It is our

determination, however, that a total management fee that equates to as little as £7.81 per month is reasonable and that the division of management functions cannot have materially affected the fee. For succeeding years the total annual management fee rose to £2,500 but, in our view, that remained a reasonable and necessarily incurred fee for the proper management of this estate in each year with which we are concerned.

60. The insurance premium included in each year appeared to have been allocated to the wrong financial year but the parties sensibly agreed that this was a mere accounting error that made no difference to the question of the underlying liability. The Respondent did, however, challenge the amount of the insurance premiums generally. He asserted that the landlord was likely paying an additional increment in order to pay the premium in monthly instalments and he objected that the overall premium was excessive.
61. For the Applicant it was said that there was nothing in the Lease that prohibited payment on a monthly basis. Moreover, the Applicant's evidence was that it engages an insurance broker, namely Thomas Carroll Plc., to review the costs of insurance each year. That broker negotiates discounts and the evidence of Mr. Edwards for the Applicant was that they then take, and act upon, that broker's advice.
62. The Respondent provided no evidence of alternative premiums and in view of the Applicant's evidence about the use of a broker we accept that all six years of premiums were reasonable and reflected an appropriate fee for insurance under the Lease. We do not consider it unreasonable to spread the cost of those premiums by monthly instalments.
63. Based on the foregoing, the sums that would be recoverable as service charges for the Flat for the year ending November 2009 are as follows:

		<b>Total:</b>	<b>Flat 23:</b>
<b>Electricity</b>		£188.81	<b>£15.73</b>
<b>Repair and Replacement</b>			
17 January 2009	Roof repair	£525.00	Nil
9 March 2009	Lock repair	£108.11	£18.02
16 March 2009	Manhole replacement	£85.00	£7.08
23 March 2009	Insurance claim	-£525.00	Nil
7 July 2009	Tile repair	£510.00	£21.25
5 August 2009	Roof repair	£455.00	£18.96
7 September 2009	Roof repair	£745.00	Nil
16 September 2009	Door repair	£30.00	£1.25
10 October 2009	Roof repair	£820.00	£68.33
17 November 2009	Roof repair	£120.00	Nil
17 November 2009	Roof repair	£135.00	£22.50
7 December 2009	Glass replacement	£116.15	£19.36
		<b>Sub-total:</b>	<b>£176.75</b>
<b>General Estate Charges</b>			
30 November 2009	Accountants Certificate	£207.00	
30 November 2009	Management – Toms & Toms	£1,000.00	
30 November 2009	Management – Wm Bradley & Wallace	£1,250.00	

		<b>Sub-Total:</b>	<b>£102.38</b>
<b>Insurance</b>			
25 December 2009		£4,111.82	<b>£171.33</b>
<b>Total:</b>			<b>466.19</b>

2010 - £450.92

64. The demand for 2010 totalling £450.92 per flat was based on the following expenditure as summarised at page 39 of the bundle:

		<b>Amount:</b>	<b>(Sub) Total:</b>
<b>Electricity</b>			
27 January 2010		£203.21	
26 April 2010		£82.55	
22 July 2010		£71.10	
22 Oct. 2010		£69.39	
			<b>£426.25</b>
<b>Repair and Replacement</b>			
9 Dec. 2009	Insurance claim	-£120.00	
7 Mar. 2010	Manhole replacement	£107.00	
22 Mar. 2010	Drain clearance	£381.88	
21 Apr. 2010	Drain clearance	£70.50	
5 May 2010	Drain inspection	£117.50	
14 June 2010	Drain inspection/clearance	£152.75	
14 Jul. 2010	Glazing	£310.00	
16 Jul. 2010	Manhole repair	£1,586.25	
13 Sept. 2010	Roof repair	£155.00	
1 Oct. 2010	Roof repair	£145.00	
5 Oct. 2010	Insurance claim	-£310.00	
30 Nov. 2010	Roof repair	£145.00	
			<b>£2,803.88</b>
<b>General Estate Charges</b>			
30 November 2010	Accountants Certificate	£223.25	
30 November 2010	Management – Toms & Toms	£1,250.00	
30 November 2010	Management – Wm Bradley & Wallace	£1,250.00	
			<b>£2,723.25</b>
<b>Insurance</b>			
25 December 2010			<b>£4,868.76</b>

65. In respect of the electricity charges, the figures for Block 1 were agreed from invoices in the amount of £18.07, £57.66, £42.34 and £46.68 and so total £164.75 and must be split by 12 to calculate an equivalent one-sixth share for the Building. The resulting figure per flat is £13.73.

66. As to the expenditure under the heading "Repair and Replacement" the parties accept that all of that expenditure in 2010 falls to be treated as Estate Charges. However, the total of £2,803.88 in the summary above was wrong. It should in fact have added up to £2,740.88.
67. The sum of £310.00 for glazing was seemingly met by an insurance payment in the same amount for which credit has been given by the Applicant. The Applicant has also given credit for a further insurance claim in the sum of £120.00. All of the expenditure bar the roof repair for £155.00 on 13 September 2010 was supported by invoices but the fact of that work was conceded by the Respondent who also conceded that all of the expenditure for the work under this head had been reasonably incurred, was to a reasonable standard and was reasonable in amount. Had that concession not been made this Tribunal would have made that finding in any event based on the Applicant's supporting evidence in the form of the invoices in the bundle.
68. The accountants' fees were conceded by the Respondent and, for the reasons given above, we determine that both management fees and the insurance premium would be recoverable as services charges in full.
69. On the basis of these figures, the service charge for the Flat for the year ending in November 2010 would comprise:

	<b>Total:</b>	<b>Flat 23:</b>
<b>Electricity</b>	£164.75	<b>£13.73</b>
<b>Repair and Replacement</b>	£2,740.99	<b>£114.20</b>
<b>General Estate Charges</b>	£2,723.88	<b>£113.49</b>
<b>Insurance</b>	£4,868.76	<b>£202.87</b>
<b>Total:</b>		<b>£444.29</b>

2011 - £442.58

70. The demand for 2011 totalling £442.58 per flat was based on the following expenditure as summarised at page 37 of the bundle:

	<b>Amount:</b>	<b>(Sub) Total:</b>
<b>Electricity</b>		
28 Jan. 2011	£109.18	
4 May 2011	£70.42	
4 Aug. 2011	£15.04	
26 Oct. 2011	£48.83	
		<b>£243.47</b>
<b>Repair and Replacement</b>		
9 Sept. 2011	Replacement lock	£35.00
9 Sept. 2011	Door repair	£50.00
26 Oct. 2011	Balcony door repair	£50.00
26 Oct. 2011	Drain clearance	£50.00
26 Oct. 2011	Replacement lock	£65.00
11 Nov. 2011	Rehang and reglaze door	£50.00
30 Nov. 2011	Screen replacement	£1,680.00
		<b>£1,980.00</b>

<b>General Estate Charges</b>			
30 November 2011	Accountants Certificate	£240.00	
30 November 2011	Management – Toms & Toms	£1,250.00	
30 November 2011	Management – Wm Bradley & Wallace	£1,250.00	
			<b>£2,740.00</b>
<b>Insurance</b>			
25 December 2011			<b>£5,658.44</b>

71. In respect of the electricity charges, the figures for Block 1 were agreed from invoices in the amount of £60.07, £39.68, and £16.97 and so total £116.72. Again, they must be split by 12 to calculate an equivalent one-sixth share for the Building. The resulting figure per flat is £9.73.
72. As to the expenditure under the heading "Repair and Replacement" the Respondent again accepted that all of the expenditure for the work under this head had been reasonably incurred, was to a reasonable standard and was reasonable in amount save for one item. The item put in issue was the September door repair of £50.
73. The accompanying invoice at page 135 of the bundle itemised this as: *"Replace damaged lock at rear of property with Legge high security night latch also replace worn cylinder and extra keys one for each flat"*. A fee of £50.00 was charged for that work and is manifestly reasonable but the Respondent challenged this on the basis of "shoddy workmanship". However, whilst the condition of the locks now may require attention it was not possible, on the available evidence, to conclude that the work was not carried out to an adequate standard at the time that it was done in 2011 and the Respondent did not substantiate that suggestion adequately. For this reason, we find for the Applicant on this issue.
74. Because of an ambiguity in the invoice for rehangng a door (which invoice referred to the "middle block") it was common ground that that expenditure should be treated as an Estate Charge. It was also common ground that the balance of the repairs were Maintenance Charges. For the screen replacement on 30 November 2011 (which cost £1,680) the accompanying invoice showed that only half of that cost related to the material Building and so we have made that adjustment.
75. From the invoicing it was clear that all of the foregoing maintenance charges related to the material Building with the exception of the replacement lock repair on 9 September 2011. For that £35 repair only it is accordingly necessary to split the cost across all 12 flats in Block 1.
76. For the reasons already given, we determine that the accountant's fees, estate management costs and insurance premiums were all reasonably incurred and reasonable in amount and so are, or would be, recoverable as part of the service charge. The resulting figures for 2011 are accordingly:

		<b>Total:</b>	<b>Flat 23:</b>
<b>Electricity</b>		£116.72	<b>£9.73</b>
<b>Repair and Replacement</b>			
- Maintenance Charges 1/6		£1,055.00	<b>£175.83</b>

- Maintenance Charges 1/12		£35.00	<b>£2.92</b>
- Estate Charges		£50.00	<b>£2.08</b>
<b>General Estate Charges</b>		£2,740.00	<b>£114.17</b>
<b>Insurance</b>		£5,658.44	<b>£235.77</b>
<b>Total:</b>			<b>£540.50</b>

2012 - £550.78

77. The demand for 2012 totalling £550.78 per flat was based on the following expenditure as summarised at page 35 of the bundle:

		<b>Amount:</b>	<b>(Sub) Total:</b>
<b>Electricity</b>			
25 Jan. 2012		£67.20	
25 Apr. 2012		£79.59	
23 Jul. 2012		£58.45	
22 Oct. 2012		£79.09	
			<b>£284.33</b>
<b>Repair and Replacement</b>			
7 Feb. 2012	Roof repair	£440.00	
22 Mar. 2012	External light installation	£165.60	
21 May 2012	Drain clearance	£84.00	
24 Jul. 2012	Roof repair	£275.00	
19 Sept. 2012	Drain clearance	£84.00	
22 Nov. 2012	Screen replacement	£2,760.00	
29 Nov. 2012	Soil pipe clearance	£288.00	
29 Nov. 2012	Soil pipe clearance	£192.00	
			<b>£4,288.60</b>
<b>General Estate Charges</b>			
30 November 2012	Accountants Certificate	£252.00	
30 November 2012	Management – Toms & Toms	£1,250.00	
30 November 2012	Management – AC Edwards	£1,250.00	
			<b>£2,752.00</b>
<b>Insurance</b>			
25 December 2012			<b>£5,893.82</b>

78. In respect of the electricity charges, the figures for Block 1 were agreed from invoices in the amount of £46.37, £47.40, £44.07 and £47.36 and so total £185.20. Again, they must be split by 12 to calculate an equivalent one-sixth share for the Building. The resulting figure per flat is £15.43.

79. As to the expenditure under the heading "Repair and Replacement", the position is as follows:

<b>Repair and</b>			
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<b>Replacement</b>			
7 Feb. 2012	Roof repair	£440.00	It was common ground that this was an Estate Charge.
22 Mar. 2012	External light installation	£165.60	It was common ground that this was an Estate Charge.
21 May 2012	Drain clearance	£84.00	It was common ground that this was an Estate Charge.
24 Jul. 2012	Roof repair	£275.00	The Applicant conceded that this was a Maintenance Charge for Block 2 and so should be excluded.
19 Sept. 2012	Drain clearance	£84.00	The Applicant conceded that this was a Maintenance Charge for Block 2 and so should be excluded.
22 Nov. 2012	Screen replacement	£2,760.00	Excluded (see below).
29 Nov. 2012	Soil pipe clearance	£288.00	See following paragraph. One half allowed as Estate Charge.
29 Nov. 2012	Soil pipe clearance	£192.00	See following paragraph. One half allowed as Estate Charge.

80. For each of the two soil clearance charges on 29 November 2012 the invoices revealed that the works probably constituted both Estate Charges and Maintenance Charges for Block 2 and the parties agreed that the sensible and practical course (if somewhat arbitrary) was to split both invoices in half and then exclude the half that was to be treated as a Maintenance Charge for Block 2.
81. In relation to the screen replacement for £2,760.00, at paragraph 10 of his witness statement dated 20 November 2015, Mr. Edwards indicated that the bill "did not apply" by which he meant, as we read the statement, that the work in that invoice probably related to Block 2 as a Maintenance Charge. On this basis we do not allow anything for this amount. In any event, the invoice is too lacking in particularity to allow it as a Maintenance Charge for the subject Building.
82. As with other years, it was conceded on behalf of the Respondent that the works undertaken had been to a reasonable standard and were reasonably incurred and reasonable in amount. Again, as with other years we would have been bound to make that finding in any event. This is because the works are supported by invoices, the costs evidenced therein are all evidently reasonable for each head of work and there is no suggestion that the works were not needed or necessary. Moreover, there was no positive case or evidence from the Respondent challenging the fact that works were carried out to a reasonable standard. This is true for each year.
83. Once more, for the reasons already given, we determine that the accountants' fees, estate management costs and insurance premiums were all reasonably incurred and reasonable in amount and would be recoverable as part of the service charge. In this year, that part of the estate management undertaken by William Bradley & Wallace was undertaken by AC Edwards but the fact that it was undertaken by Mr. Edwards does not affect our view that the fee reflects a genuine amount for the costs of management and is a reasonable cost that should be recoverable as part of the service charge.
84. The resulting figures for 2012 are accordingly:

		<b>Total:</b>	<b>Flat 23:</b>
<b>Electricity</b>		£185.20	<b>£15.43</b>
<b>Repair and Replacement</b>			
- Estate Charges		£929.60	<b>£38.73</b>
<b>General Estate Charges</b>		£2,752.00	<b>£114.67</b>
<b>Insurance</b>		£5,893.80	<b>£245.58</b>
<b>Total:</b>			<b>£414.41</b>

2013 - £535.51

85. The demand for 2013 totalling £535.51 per flat was based on the following expenditure as summarised at page 33 of the bundle:

		<b>Amount:</b>	<b>(Sub) Total:</b>
<b>Electricity</b>			
18 Feb. 2013		£83.82	
25 Apr. 2013		£87.61	
26 Jul. 2013		£81.07	
24 Oct. 2013		£83.75	
			<b>£336.25</b>
<b>Repair and Replacement</b>			
14 Feb. 2012	Roof repair	£258.00	
7 Mar. 2013	Drain clearance	£144.00	
3 May 2013	Rear door repair	£25.00	
3 May 2013	Pine end fascia repair	£521.00	
19 June 2013	Drain clearance	£72.00	
19 June 2013	Screen door replacement	£308.00	
7 July 2013	Roof repair	£275.00	
17 July 2013	Insurance claim re screen door	-£308.00	
19 Nov. 2013	Roof repair	£295.00	
30 Nov. 2013	Window replacement	£1,175.00	
30 Nov. 2013	Window replacement	£800.00	
			<b>£3,565.00</b>
<b>General Estate Charges</b>			
30 November 2013	Accountants Certificate	£264.00	
30 November 2013	Management – Toms & Toms	£1,250.00	
30 November 2013	Management – AC Edwards	£1,250.00	
			<b>£2,764.00</b>
<b>Insurance</b>			
25 December 2013			<b>£6,665.25</b>

86. In respect of the electricity charges, the figures for Block 1 were agreed from invoices in the amount of £22.77, £56.02, £50.53 and £52.26 and so total £181.58. Again, they must be split by 12 to calculate an equivalent one-sixth share for the Building. The resulting figure per flat is £15.13.

87. As to the expenditure under the heading “Repair and Replacement”, the position is as follows:

<b>Repair and Replacement</b>			
14 Feb. 2012	Roof repair	£258.00	This was a Maintenance Charge for Block 2 which the Applicant conceded should be excluded from the service charge.
7 Mar. 2013	Drain clearance	£144.00	The parties agreed that this should be treated as an Estate Charge.
3 May 2013	Rear door repair	£25.00	The parties agreed that this should be treated as an Estate Charge.
3 May 2013	Pine end fascia repair	£521.00	See the following paragraph. One half allowed as Maintenance Charge.
19 June 2013	Drain clearance	£72.00	The parties agreed that this should be treated as an Estate Charge.
19 June 2013	Screen door replacement	£308.00	Excluded as covered by an insurance claim.
7 July 2013	Roof repair	£275.00	This was a Maintenance Charge for another Building and so is excluded.
17 July 2013	Insurance claim re screen door	-£308.00	
19 Nov. 2013	Roof repair	£295.00	This was a Maintenance Charge for another Building and so is excluded.
30 Nov. 2013	Window replacement	£1,175.00	The Applicant conceded that this was a Maintenance Charge for another Building and should be excluded.
30 Nov. 2013	Window replacement	£800.00	The Applicant also conceded that this was a Maintenance Charge for another Building and should be excluded.

88. For the pine end fascia repair of £521.00 the accompanying invoice from R.G. Edwards Building & Roofing detailed works which required the use of a scaffold tower and the stripping out of a damaged and defective pine timber fascia, the replacement of rotten roof battens and the fitting of a uPVC fascia as well as work to the roof tiles. It is evidently work to a Building which falls within the definition of a Maintenance Charge and there is express reference in the invoice to Block 1. It was common ground between the parties that the invoice amount should be split in half to determine the share that the relevant Building should bear. To the extent that there was any other challenge to the reasonableness of undertaking these works, it is clear from the terms of the invoice that the fascia and roof required remedial work and the amount invoiced is entirely reasonable for the character of the works therein particularised.

89. More generally, there is no suggestion that the costs of the repair works were not reasonably incurred nor is it suggested that they were not to a reasonable standard. Indeed, the Respondent conceded both.

90. The other "general estate charges" are recoverable as service charges for the reasons already given.

91. The resulting figures for 2013 are accordingly:

		<b>Total:</b>	<b>Flat 23:</b>
<b>Electricity</b>		£181.58	<b>£15.13</b>
<b>Repair and Replacement</b>			
- Maintenance Charges 1/6		£260.50	<b>£43.42</b>
- Estate Charges 1/24		241.00	<b>£10.04</b>
<b>General Estate Charges</b>		£2,764.00	<b>£115.17</b>
<b>Insurance</b>		£6,186.98	<b>£257.79</b>
<b>Total:</b>			<b>£441.55</b>

2014 - £454.33

92. The demand for 2014 totalling £454.33 per flat was based on the following expenditure as summarised at page 31 of the bundle:

		<b>Amount:</b>	<b>(Sub) Total:</b>
<b>Electricity</b>			
28 Feb. 2014		£40.92	
29 Apr. 2014		£90.60	
28 Jul. 2014		£69.62	
28 Oct. 2014		£80.58	
			<b>£281.72</b>
<b>Repair and Replacement</b>			
28 Jan 2014	Roof repair	£295.00	
7 Apr. 2014	Roof repair	£320.00	
21 May 2014	Roof repair	£285.00	
4 July 2014	Drain inspection	£72.00	
15 Sept. 2014	Roof repair	£330.00	
30 Jan. 2014	Roof repair	£320.00	
			<b>£1,622.00</b>
<b>General Estate Charges</b>			
30 November 2014	Accountants Certificate	£276.00	
30 November 2014	Management – Toms & Toms	£1,250.00	
30 November 2014	Management – AC Edwards	£1,250.00	
			<b>£2,776.00</b>
<b>Insurance</b>			
25 December 2014			<b>£6,224.12</b>

93. As regards the electricity charges, the figures for Block 1 were agreed from invoices in the amount of £40.92, £60.99, £57.18 and £48.19 and so total £207.28. Again, they must be split by 12 to calculate an equivalent one-sixth share for the Building. The resulting figure per flat is £17.27.

94. For the expenditure under the heading "Repair and Replacement", the position is as follows:

<b>Repair and Replacement</b>			
28 Jan 2014	Roof repair	£295.00	The Applicant accepted that this was a Maintenance Charge relating to a different Building and so was irrecoverable.
7 Apr. 2014	Roof repair	£320.00	The parties agreed that this was to be treated as an Estate Charge.
21 May 2014	Roof repair	£285.00	The Applicant accepted that this was a Maintenance Charge relating to a different Building and so was irrecoverable.
4 July 2014	Drain inspection	£72.00	The Applicant accepted that this was also a Maintenance Charge relating to a different Building and so was irrecoverable.
15 Sept. 2014	Roof repair	£330.00	The parties agreed that this was to be treated as an Estate Charge.
30 Jan. 2014	Roof repair	£320.00	The invoice supporting this expenditure was a duplicate for the above roof repair in the same amount and so it is excluded as irrecoverable or not incurred expenditure.

95. The balance of the expenditure is recoverable for the reasons previously given and the resulting figures for 2014 are as follows:

	<b>Total:</b>	<b>Flat 23:</b>
<b>Electricity</b>	£207.28	<b>£17.27</b>
<b>Repair and Replacement</b>		
- Estate Charges	£650.00	<b>£27.08</b>
<b>General Estate Charges</b>	£2,776.00	<b>£115.67</b>
<b>Insurance</b>	£6,224.12	<b>£259.34</b>
<b>Total:</b>		<b>£419.36</b>

### Summary

96. The resulting totals for the six years in issue are the following:

<b>Year</b>	<b>Amount claimed:</b>	<b>Amount recoverable:</b>
2009	£415.72	£466.19
2010	£450.92	£444.29
2011	£442.58	£540.50
2012	550.78	£414.41
2013	535.51	£441.55
2014	454.33	£419.36

<b>Totals:</b>	<b>£2,849.84</b>	<b>£2,726.30</b>
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97. Self-evidently, the result is that the total amount recoverable, or at least potentially recoverable, as service charges from the Respondent is £2,726.30. This is a reduction on the amount claimed of £123.54.
98. By way of general observation, the very slight difference is not altogether surprising since the vast majority of the expenditure on repairs was not seriously challenged and we found in favour of the Applicant in relation to the insurance premiums and management fees. Moreover, the need to make adjustments so that expenditure was properly treated as Estate Charges or Maintenance Charges in accordance with the Lease was always likely to result in little net change. Whilst some expenditure is deducted as an irrecoverable Maintenance Charge for a different Building, the Respondent's share of Maintenance Charges for his own Building is increased where appropriate.
99. By reason of the foregoing this Tribunal accordingly determines that:
- (i) By reason of section 21B(3) of the Landlord and Tenant Act 1985 the Respondent has a statutory right to withhold payment of the material service charges until served with a demand for the payment of those service charges which is accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges which complies with the requirements of the Service Charges (Summary of Rights and Obligations) (Wales) Regulations 2007.
  - (ii) The amount of the service charges which are otherwise payable for the material flat for the six years in issue from 2009 to 2014 are £2,726.30.
100. For the sake of completeness, we would add that the Respondent expressly disavowed any intention to make an application under section 20C of the Landlord and Tenant Act 1985 and we accordingly make no determination in this regard.

#### **ORDER**

The Applicant's claim for £2,849.84 for outstanding service charges should be allowed in the sum of £2,726.30 subject to the Respondent's entitlement to withhold payment under section 21B(3) of the Landlord and Tenant Act 1985.

#### **REGULATION 18 CERTIFICATE**

The foregoing decision was originally released by the Tribunal on 30<sup>th</sup> May 2016. By letter, erroneously dated 21 June 2016, the Respondent's solicitors correctly notified the Tribunal that the Respondent's total liability had been overstated by the sum of £2.63. That accidental slip resulted from a failure to incorporate the finding at paragraph 66 of this decision in the resulting totals. In accordance with Regulation 18(7) of the Leasehold Valuation Tribunal (Procedure) (Wales) Regulations 2004 the Chairman has corrected the decision which corrections are hereby certified.

**Corrections certified and dated this 8<sup>th</sup> day of August 2016**



**CHAIRMAN**