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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/00FY/LAC/2013/0004** **BIR/00FY/LSC/2013/0012**
Property	:	**Apartment 339, Marco Island, Huntingdon St, Nottingham, NG1 1AP**
Applicant	:	**Marco Developments Ltd**
Representative	:	**Blue Property Management UK Ltd who instructed Mr Andrew Beaumont - counsel**
Respondent	:	**Mrs Marie Jago**
Representative	:	**None**
Type of Application	:	**Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985 and for a determination on liability and reasonableness of service charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Judge C Goodall** **Mr Colin Gell FRICS**
Hearing Date and venue:		**13 December 2013 at Nottingham Magistrates Court**
Date of Decision	:	17 FEB 2014

DECISION

Background

1. On 10 December 2012, the Applicant commenced debt proceedings against the Respondent in Dartford County Court, under case reference 2QZ54554, for recovery of £1,661.00. The debt was said to be for non-payment of service charges due from the Respondent under the terms of a lease dated 3 August 2005 of apartment 339 Marco Island, Nottingham ("the Lease"). The apartment is one unit in a mixed residential / commercial development constructed in about 2004 on Huntingdon St in Nottingham ("the Property").

2. The Respondent said that she did not admit the debt and by an order dated 22 May 2013, District Judge Glover ordered that the case be transferred to the Leasehold Valuation Tribunal (as it then was) for "determination of any sums recoverable by [the Applicant] from [the Respondent]".

3. Separately, the Applicant has submitted applications to the Tribunal, dated 23 July 2013, for a determination of liability to pay and reasonableness of the service charges and administration charges in dispute in this case.

4. The hearing of the case took place on 13 December 2013 in Nottingham. The Applicant itself has not played any part in these proceedings, but its case has been handled throughout by Blue Property Management UK Ltd ("Blue") who up until the end of the hearing before the Tribunal claimed to be acting as its agent. For the hearing, Blue was represented by Mr Andrew Beaumont of counsel, and Mr Peter Evans, Managing Director of Blue also attended.

5. The Respondent's case for not being liable for the debt is set out in two letters. The first is a letter dated 4 March 2013 and written when the case was still in the County Court. The second is a letter dated 20 October 2013 written in response to a direction of this Tribunal in which the Respondent sets out the issues she has with the claim in a little more detail. The Respondent also emailed the Tribunal on 11 December 2013 with further comments. The content of these letters is discussed in more detail at paragraph 33 to 35 below. The Respondent, who lives in Kent, was not able to attend the hearing due to illness in the family.

6. Blue submitted a statement of case, received by the Tribunal on 19 September 2013, and a bundle of documents which included a further statement of case, on 5 December 2013.

7. The Tribunal did not carry out an inspection of the Property. The issues in the case relate to interpretation of the Lease and the calculation of the service charge. However, the Tribunal is familiar with the Property from involvement with a previous case relating to it. Blue was informed of this at the hearing.

8. After the hearing, the Tribunal considered that it was not able to make a decision without further information, which had not been available at the hearing, and that it also required further considered submissions from the parties. Therefore the parties were asked by letter to provide information on:

   (a) What proportion of expenditure is payable by the leaseholders of the residential flats (and in particular by the Respondent). The Tribunal sought information on the floor areas of the apartments and other parts of the Property on which service charge apportionment is supposed to be based; and

   (b) To whom should any payments be made. The Tribunal's concern was to understand the basis upon which the Applicant or its agent Blue was claiming to be entitled to the sums demanded from the Respondent.

9. Blue responded to this request on 21 January 2014 by providing further data setting out the floor areas of all relevant parts of the building, along with recalculated service charges showing the amount said to constitute the shortfall payable by the Respondent, and copies of the budgets for the years 2008/9, 2009/10, 2010/11, and 2011/12. Blue also provided a written submission from Mr Beaumont explaining the basis upon which the Applicant or Blue claimed to be entitled in law to demand sums from the Respondent.

10. No further submissions have been received from the Respondent.

The Claim

11. In the County Court proceedings, the applicant claimed £1,661 plus a court fee of £80, totalling £1,741. There is no breakdown of this debt; it is described as "unpaid service charges". At the hearing, the claim had risen to £1,799.96. A detailed breakdown of this amount appears in paragraph 31 below

12. Although said to be "unpaid service charge" on the County Court claim form, this claim is made up both of amounts said to be due as service charges, and sums claimed as what are known as administration charges. The claim is based on the obligations imposed upon the Respondent in the Lease. The terms of the Lease are thus important and are set out in the next section.

The Lease

13. The Lease is for a term of 150 years from 1 April 2004 granted for a premium and an index linked annual ground rent of £250. The Landlord is the Applicant in this case, and the Tenant is the Respondent in this case.

14. The material provisions relating to service charges are:

a) A covenant in clause 3.1 by the tenant to pay the Service Charge by two equal instalments in advance on the Payment Days

b) A definition of "Service Charge" in clause 1.1, which is "a sum equal to the Service Charge Proportions of the aggregate Annual Maintenance Provision for each Maintenance Year

c) A definition in the Particulars of "Service Charge Proportions" which are "The proportions set out in Part 1 of Schedule 4 (subject to Part 2 of Schedule 4)."

d) A definition in the Particulars of "Payment Days" as 1 April and 1 October

e) Further definitions in clause 1.1, the following being material:

i) "Annual Maintenance Provision" means expenditure (actual or anticipated) calculated in accordance with Schedule 4 Part 3

ii) "Maintenance Adjustment" means the amount (if any) calculated under paragraph 3 of Part 3 of Schedule 4

iii) "Maintenance Year" means every twelve monthly period ending on 31 March (or such other date as the Landlord may from time to time decide) the whole or any part of which falls within the Term

f) Schedule 4 which provides:

Schedule 4

Part 1 – Service Charge Proportions

1 Subject to Part 2 of this Schedule the Service Charge Proportions are as set out in the following paragraphs of this Part 1

2 Where any item of the Annual Maintenance Provision relates to the Estate generally, the proportion to be attributed to the Apartment and paid by the Tenant is to be calculated as follows:

2.1 firstly the cost is apportioned between the residential Units on the Estate and the commercial Units on the Estate (according to the relative floor areas of the residential Units and the commercial Units)

2.2 then, of the proportion attributed to the residential Units, this is apportioned between each residential Unit according to its floor area (relative to the total floor area of all the residential Units)

3 Where any item of the Annual Maintenance Provision relates solely to the residential Units on the Estate, the proportion to be

attributed to the Apartment and paid by the Tenant is calculated by apportioning the cost between each residential Unit on the Estate according to its floor area (relative to the total floor area of all the residential Units)

Part 2 – Variation of Proportions

[not relevant to this decision]

Part 3 – Computation of Annual Maintenance Provision

1 Calculated prior to Maintenance Year

The Annual Maintenance Provision in respect of each Maintenance Year shall be computed not later than the 31 March immediately preceding the commencement of the Maintenance Year

2 Annual Maintenance Provision

The Annual Maintenance Provision shall comprise:

2.1 the expenditure estimated as likely to be incurred in the Maintenance Year by the Landlord for the purposes mentioned in Schedule 5; together with

2.2 an appropriate amount as a reserve towards those matters mentioned in Schedule 5 which are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the remainder of the Term or at intervals of more that one year during the remainder of the Term including such matters as decorating the exterior of the Estate, the repair of the structure of the Estate and the repair of the Conduits: and

2.3 a reasonable sum to remunerate the Landlord for its administrative and management expenses (including a profit element) which, if challenged by any tenant, is to be referred for determination by an independent chartered accountant appointed on the application of either party by the President of the Institute of Chartered Accountants in England and Wales acting as an expert and whose fees and disbursement shall be paid as the independent chartered accountant directs

3 Maintenance Adjustment

3.1 After the end of each Maintenance Year the Landlord shall determine the Maintenance Adjustment

3.2 The Maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2.1 falls short of the actual expenditure in the Maintenance Year

3.3 The Tenant shall be allowed or shall on demand pay (as the case may be) the proportion of the Maintenance Adjustment appropriate to the Apartment

4 Manager's certificate

Subject to provisions of paragraph 2.3 a certificate signed by the Landlord and purporting to show the amount of the Annual Maintenance Provision or the amount of the Maintenance Adjustment for any Maintenance Year shall be conclusive of such amount

5 Annual Accounts

The Landlord shall arrange for accounts of the Service Charge in respect of each Maintenance Year to be prepared and shall supply to the Tenant a summary of such accounts

g) Schedule 5, which sets out details of the services to be provided within the Service Charge. Those were not in issue in this case.

h) In relation to administration charges, Schedule 3, paragraph 1.2 provides:

"1.2 To pay on a full indemnity basis all costs and expenses incurred by the Landlord including solicitors fees, in enforcing the payment by the Tenant of any Rent, Service Charge, Maintenance Adjustment, Special Contribution or other moneys under the terms of this lease.

The Law

15. The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985 (" the Act").

16. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

a. The person by whom it is or would be payable
b. The person to whom it is or would be payable
c. The amount, which is or would be payable
d. The date at or by which it is or would be payable; and
e. The manner in which it is or would be payable

17. Section 19(1) of the Act provides that:

"Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

18. A service charge is only payable if the terms of the lease permit the lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41).

19. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2EGLR100).

20. In relation to administration charges, the law is contained in Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the Act"), the relevant parts of which provide as follows:

1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

...

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

...

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

4 (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

5 (1) An application may be made to an appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on an appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

...

6 (6) "Appropriate tribunal" means –

(a) in relation to premises in England, the First-Tier Tribunal...

The Property

21. Marco Island is a redevelopment of an old commercial unit previously used, so far as the Tribunal understands, as the Nottingham GPO sorting office. There are thirteen floors. Apart from the access to the residential flats, the ground floor is unused commercial space. The first floor (which itself has a mezzanine floor) is used for car parking, having its own ramped access from the rear of the building. There are then eight floors above (floors 2 to 9) containing residential accommodation. There are 337 flats in total on these floors. Floors 2 – 8 each have 43 studio apartments, of which number 339 is one. On floor 9 there are 36 apartments, some of which are larger, some being two bedroom, and some having not just two bedrooms but also additional facilities. Floors 10, 11 and 12 are set back slightly within the overall building envelope and are uncompleted residential penthouses and residential units.

The management history in this case

22. Under the Lease, the responsibility for management of the Property rested with the Applicant, Marco Developments Ltd. The Tribunal has confirmation, in the form of a short letter dated 10 Jan 2010, that Marco Developments Ltd engaged Blue as its agent in relation to all Leasehold Service Charge and Ground Rent matters, specifically County Court claims and any other legal action. There are no time limits on this appointment in the letter. There is also reference in other documents to a management agreement dated 1 December 2008 having been entered into but the Tribunal has not been supplied with a copy of this agreement.

23. On 17 June 2011, a letter was sent by a management company called Eddisons Residential Ltd ("Eddisons") to all leaseholders which stated that:

"From the previous correspondence regarding the most recent ground rent invoices you will be aware that Receivers have been appointed over the property known as Marco Island.

The Receivers have appointed Eddisons Residential to act as the managing agent for Marco Island as of 13.06.2011. ...

As managing agents, Eddisons Residential will be responsible for the collection of service charge from all leasehold owners and the provision of all management services at Marco Island. Only Eddisons Residential has the ability to collect service charge from you and all other leasehold owners.

Please note, Blue ... are NOT engaged by the Receivers of the Marco Island to carry out management services at Marco Island and any payments made to Blue will not negate your obligation to pay service charge to the appointed managing agents Eddisons Residential. You should therefore make no further payments to Blue. ..."

24. Blue responded to this letter on 22 June 2011 by writing to the leaseholders as follows:

"We are aware you may have received a letter from Eddisons stating they have taken over management of Marco Island in relation to Service charges.

Please be aware, The Receivers, and any of their agent's appointment is currently subject to a dispute and in the hands of solicitors.

Until this matter is resolved Blue ... will continue to collect service charges and manage and maintain the building as usual. ..."

25. This prompted a long letter from Eddisons dated 4 July 2011. It started as follows:

"It has come to my attention that following my letter of 17.06.2011 to all leaseholders informing you that Eddisons Residential Limited have been appointed as agent to deal with service charge at the property, that Blue has written a contradictory letter to all leasehold owners at the property. This is very unfortunate and will no doubt cause confusion and distress amongst many of you and I can assure you that Blue do not have the authority of the Receivers to collect service charge or contact you.

I appreciate that as events have unfolded and Blue have made the situation more complicated through their recent actions, that many of the leasehold owners will now require a fuller explanation of what has happened and why in order to put your minds are rest. Therefore I have prepared a briefing note below to explain the position and I hope this will answer many of your questions. Unfortunately it is quite long and detailed."

26. The letter then explains that a landlord of a leasehold property is responsible for providing services to the property, and that service charges have to be collected to fund the services. It says that the Applicant borrowed funds from Royal Bank of Scotland and these were secured over the Property. It explains that the security document allows the bank to appoint receivers, and on that appointment the interests of the original borrower over a property are transferred to the receivers, who then take over provision of services and collection of service charges and ground rents. It says receivers were appointed on 13.12.2010. It states that receivers do not have to take on the contractual obligations entered into by the borrower, and that the appointment of Blue as manager was a contractual arrangement.

27. There is then an explanation of the history of the receivers negotiations with Blue as follows:

"After inspection of the property, discussion with Blue and requests for information in respect of management of the property so that the Receivers could satisfy themselves that the property was being managed effectively, it became apparent that there were issues with the way the property was being managed and the service charge accounting. Basic information could not be provided to the Receivers and we also had concerns regarding the health and safety issues at the property, as well as concerns regarding the amount of funds being put aside as a sinking fund for major works (e.g damage to an external wall or roof etc). Additionally, a number of leaseholders (including a group with around 100 apartments between them) contacted us to discuss issues that they were having with Blue in respect of the services and the lack of clear and transparent financial information.

These issues, coupled with the apathetic attitude of Blue to our requests for information, led the Receivers to confirm to Blue that they were not adopting their management contract and were appointing Eddisons Residential to act as their agent to deal with [collection of service charges]."

28. A further paragraph in the letter explains more about the issues Eddisons had with Blue and gives specific advice to leaseholders, as follows:

"With reference to the actions of Blue to date, we do not anticipate (and have not had) any cooperation for them to allow an orderly handover of the management of the property. Therefore Eddisons Residential Limited will have a difficult few weeks getting to grips with everything and we anticipate that they will be starting from a zero balance in the service charge account for this property. ... I would advise you to retain any monies that would have been payable to Blue since 13.06.2011. If you have paid money in advance to Blue, I do not expect that Blue will transfer this to Eddisons Residential Limited and I would therefore suggest that you contact Blue and request a pro rata refund. Once Eddisons Residential Limited have written to you, please let them know if you have paid monies in advance to Blue."

29. Behind the scenes, as had been hinted at in Blue's letter of 22 June 2011, legal proceedings had been underway. The Tribunal has very few details of those proceedings, but has been supplied with a copy of a consent order dated 31 August 2011 between the Receivers and Blue. The proceedings themselves were brought by the Receivers against five defendant's, the second being the Applicant in these proceedings and the fifth being Blue. An injunction had been granted on 27 July 2011, but it is not apparent whether that injunction impacted Blue. In the consent order, Blue acknowledged that their management agreement with the Applicant did not transfer to the Receivers. In respect of ongoing management, paragraphs 6 and 13 of the order provide:

"6. The 5th Defendant [Blue] shall pay all salaries, utilities and other costs and outgoings incurred in respect of the Property in the period up to and including 30 September 2011. ...

13. The 5th Defendant shall be entitled at its own cost to collect all moneys due in respect of service charge relating to the Property in respect of any period prior to 1 October 2011 and in respect of such period to demand a Maintenance Adjustment as provided for in the tenants leases, and to apply all such receipts first towards payment of their proper fees and second towards payment of costs or expenses which have been incurred by the 5th Defendant pursuant to the Management Agreement by which the 5th Defendant discharged sums payable to third parties in relation to the Property's management. The 5th Defendant shall not be entitled to bring court proceedings in the name of the Claimants or their agents. The 5th Defendant shall provide the Claimants with a summary of the arrears position on a monthly basis, the first such summary to be provided on or before 30 September 2011 at 4pm. Upon payment of such fees, costs and expenses in full, the 5th Defendant shall have no further entitlement to recover service charge payments in respect of the Property and the 5th Defendant shall provide to the Claimants details of all service charge arrears at that date."

30. Following the settlement, an agreed joint letter, dated 1 September 2011, was sent to all leaseholders which said:

"We confirm that this dispute has now been resolved by mutual agreement and the Blue Property Management is in the process of handing over management to Eddisons Residential Ltd. The handover will take effect from 1 October 2011.

Service charges in respect of the period to 30 September 2011 remain payable to Blue Property Management, including any Maintenance Adjustment for this period if demanded by Blue Property Management.

Service charges in respect of the period from 1 October 2011 will be payable to Eddisons Residential Limited and these will be invoiced to you by Eddisons Residential Limited shortly. Please ignore any invoices received from Blue Property Management in respect of service charges payable for the period 1 October 2011 to 31 March 2012. Should Blue Property Management receive any sums in respect of service charges payable from 1 October 2011 these will be transferred to Eddisons Residential Limited."

The Respondent's account with Blue

31. As identified in paragraph 11 above, the Applicant has claimed the sum of £1,799.96 from the Respondent. This claim is for a series of separate charges which are identified in the following table.

Table 1 – details of the Applicant's claim

	Date	Reason	Amount
		Opening debit balance	1.53
1	1/4/11	Half yearly s/c for 2011/12	444.00
2	16/5/11	Maintenance Adjustment for 2009-10 s/c year	273.24
3	17/8/11	Maintenance Adjustment for 2010-11 s/c year	128.32
4	2/11/11	Arrears admin charge	50.00
5	29/3/12	Arrears admin charge	50.00
6	25/5/12	Maintenance Adjustment for first half of 2011-12	212.49
7	6/8/12	Arrears admin charge	50.00
8	7/12/12	Final statement letter	89.10
9	7/12/12	First letter before action	89.10
10	7/12/12	Second letter before action	89.10
11	7/12/12	1st letter to Respondent's mortgagee	89.10
12	7/12/12	2nd letter to the Respondent's mortgagee	89.10
13	7/12/12	Fee for issuing court claim	148.50
14	undated	Court / Tribunal fee	100.00
15	undated	Interest	95.01
		Total	**1997.06**
		Less 3 payments of £66.21 each	198.63
		Balance claimed	**1799.96**

32. There are three types of claim here:

    a. one claim for the first instalment of the anticipated service charge for 2011/12 (claim 1) ("the 2011/12 budgeted service charge claim")

    b. three claims (2, 3, and 6) for sums said to be a Maintenance Adjustment following the end of the service charge years 2009/10, 2010/11, and the end of the first six months of 2011/12

    c. various claims for sums said to be due as a result of failure to pay the claims identified in a. and b. above ("the administration charge claims"). These claims comprise the rest of the claims apart from claims 1, 2, 3, and 6.

The Respondent's reasons for not paying the invoices raised by Blue

33. The Respondent has set out her reasons for not paying Blue's invoices in letters dated 4 March and 20 October 2013. In the letter of 4 March, the Respondent points out that she had been paying her service charge as requested until June 2011. At that point she received the correspondence referred to in the previous section of this decision, as a result of which "alarm bells rang and it seems for good reason". The Respondent accepts

that as she stopped her monthly payments in June, it is possible there may be three payments of £66.21 outstanding. She states that she considers the service charge accounting for Marco Island was in a mess, and there was confusion and contradiction. She considers that the invoices for excess service charges were invented and that Blue were just pulling figures out of the air to get themselves out of trouble. She says that "some underhandedness has gone on and they should be investigated".

34. In the 20 October letter, the Respondent points out the failings by Blue that had been referred to in Eddison's letters relating to failure to provide basic information, concerns about health and safety management, and lack of clear and transparent financial information. She claims the excess service charge invoices were fictitious and not justified. She stands by the advice given by Eddisons not to make further payments to Blue.

35. On 11 December 2013, the Respondent sent a further document in the form of an email. This added little to the Respondent's previous letters, but confirmed (should there have been any doubt) that the Respondent considered that Blue had been deceitful and untruthful in making claims for further sums of money and, in her view, there had been fraud in the formation of the financial claims.

The Tribunal's deliberations

36. In this case there are multiple issues. The Tribunal will consider the following questions:

    a. What is the scope of the Tribunal's enquiry into the claims by the Applicant?

    b. How should the Maintenance Adjustment claims be calculated?

    c. Is the 2011/12 budgeted service charge claim due under the lease?

    d. What Maintenance Adjustment sums are payable by the Respondent under the Lease for 2009/10, 2010/11, and for the first six months of 2011/12

    e. Are the administration charge claims payable?

    f. Who is entitled to collect any sums found to be due from the Respondent under the Lease?

a. What is the scope of the Tribunal's enquiry into the claims by the Applicant?

37. This question, which was raised by Mr Beaumont, concerns the extent to which the Tribunal may enquire into matters not directly raised by the Respondent. Mr Beaumont said that the Respondents sole basis for challenging the debt claimed was that the claims were fraudulent. If the Tribunal considers that fraud has not been established, he said, it should

not take any further points in considering whether the Respondent may have a defence to the claim and should find for the Applicant in the sums claimed. The Tribunal should say at this point that whilst it found errors and confusion in the claims made by Blue on behalf of the Applicant, it has been presented with no evidence that Blue has acted fraudulently and cannot and does not therefore substantiate that claim by the Respondent.

38. Although no authorities were quoted, the Tribunal considers that this point made by Mr Beaumont raises the question considered in the case of *Birmingham City Council v Keddie [2012] UKUT 323 (LC)*. The Upper Tribunal, in that case commented on the extent of the jurisdiction of First-tier Tribunals. The essence of the decision is summarised in the following statement at paragraph 17:

"It is the jurisdiction and function of the LVT [as the Tribunal was at that time] to resolve issues which it is asked to resolve, provided they are within its statutory jurisdiction. It is not the function of the LVT to resolve issues which it has not been asked to resolve, in respect of which it will have no jurisdiction. Neither is it its function to embark upon its own inquisitorial process and identify issues for resolution which neither party has asked it to resolve, and neither does it have the jurisdiction to do so."

39. This statement, in the view of the Tribunal, must be read in the context of the case of *Regent Management v Jones [2012] UKUT 369 (LC)*, where the Upper Tribunal made the following point:

"29. The LVT is perfectly entitled, as an expert tribunal, to raise matters of its own volition. Indeed it is an honourable part of its function, given that part of the purpose of the legislation is to protect tenants from unreasonable charges and the tenants, who may not be experts, may have no more than a vague and unfocussed feeling that they have been charged too much. But it must do so fairly, so that if it is a new point which the tribunal raise, which the respondent has not mentioned, the applicant must have a fair opportunity to deal with it."

40. Clearly the *Keddie* case imposes constraints upon the Tribunal raising matters of its own volition which the parties have not raised. But the Tribunal does not accept the implication of Mr Beaumont's submission that it has only to consider whether there has been fraud, and if not it should find for the Applicant. There are three factors which affect the approach the Tribunal takes to this issue.

41. Firstly, the Respondent's defence is not, in the opinion of the Tribunal, limited to claiming fraud on the part of Blue. Other words, such as that the accounts were "in a mess", that there was "confusion and contradiction", or that Blue were "pulling figures out of the air" clearly challenge accuracy, whatever the motivation for any inaccuracy.

42. Secondly, the question raised of the Tribunal by Dartford County Court is "what sum is payable by the Respondent to the Applicant". Answering that question requires that the Tribunal be satisfied that the Applicant has proved its case, on the basis of the evidence presented to the Tribunal in support of the claim. Manifest errors in the Applicant's understanding of the contractual basis upon which it may claim sums from the Respondent should, in the opinion of the Tribunal, be taken into account in determining whether the Respondent is liable to the Applicant for the sums claimed.

43. Thirdly, the Tribunal takes account of the fact that the Respondent has not been able to travel to the hearing because of serious family illness, and is unrepresented, and considers that whilst it must not "descend into the arena" and fight the Respondent's case for her, it should do its best to see that the case is disposed of fairly and justly.

44. The Tribunal has therefore enquired into the extent to which the documentation presented by Blue establishes that the service charge claims are valid, despite the Respondent not raising the detailed objections referred to in the discussion below. The Tribunal has also considered the extent to which it considers the administration claims are lawfully due and/or are reasonable.

<u>b. How should the Maintenance Adjustment claims be calculated (claims 2, 3, and 6)?</u>

45. This is a crucial first question, because the methodology of calculating the amounts due under the Lease drives all the resultant calculations.

46. There is no doubt that the Lease allows the landlord to claim the excess of actual expenditure over budgeted expenditure as a Maintenance Adjustment (see Schedule 4, Part 3, para 3 on page 5 above), subject of course to the tenant's right to challenge the reasonableness of that actual expenditure.

47. The Tribunal considers that the process that needs to be followed to calculate the Maintenance Adjustment (principally taken from Schedule 4 of the Lease) is:

    a. There should firstly have been an estimate of service charge expenditure for each year under clause 2.1 of Part 3 of Schedule 4;

    b. Secondly, an account is needed of the actual expenditure incurred in each service charge year;

    c. Thirdly, the difference between the estimated and actual expenditure needs to be calculated. That difference will be the Maintenance Adjustment sum for each year; and

    d. Finally, the individual apartment's contribution towards that global Maintenance Adjustment (the Service Charge Proportion) needs to

be calculated using the system set out in Part 1 of Schedule 4. This is the element that has caused the most difficulty in this case.

48. The calculation of the service charge proportion requires firstly that each item of expenditure be allocated into one of two categories. The first is expenditure that "relates to the Estate generally", and the second is expenditure that relates "solely to the residential Units on the Estate".

49. Items in the first category need to be apportioned firstly between the residential and the commercial Units at the Property (according to floor area), and then the proportion that is attributable to the residential units needs to be apportioned between all those units, again according to floor area.

50. Items in the second category need to be apportioned between the residential units, again according to floor area.

51. In the further submissions received from Blue on 22 January 2014, floor areas are given. The eight floors comprising 337 flats total 162,895 sq ft. Individual percentages are given for each flat representing their percentage proportion of that total, correctly using floor area. Flat 339 has an allocation of 0.27% of the total floor area of the 337 flats on floors 2 to 9. The unoccupied top three floors total a further 31,400 sq ft. The commercial units and the car park on the ground and first floors (plus mezzanine floor) total 41,200 sq ft. The Tribunal accepts and adopts these figures.

52. In their submissions, Blue have suggested that the eight floors of flats comprise the residential units, and the incomplete top floors and two ground floors represent the commercial units. The Tribunal does not accept this approach. The Lease clearly requires a division between "residential" and "commercial" units. The top floors, described as penthouse suites, are clearly intended as residential units. They are currently unoccupied, and are said to be incomplete, but if a decision has to be made as to whether they are residential or commercial, the Tribunal prefers, and determines, that they are residential units.

53. The total amount of residential floor space is therefore 162,895 sq ft plus 31,400 sq ft which equals 194,295 sq ft. The split between commercial and residential floor space is 41,200 / 194,295, or expressed as percentages, 17.5% / 82.5% (rounded) of the total floor space of 235,495 sq ft.

54. Floors 2 to 9 comprise only 83.839% of the total residential floor space. The Respondent is responsible for 0.27% of that 83.839%. Converting that into a percentage of the total residential costs produces a percentage of 0.2263%. 0.27% of 83.839% is the same as 0.2263% of 100%.

55. The Respondent is therefore liable for 0.2263% of 82.5% of the costs relating to the Estate generally, and 0.2263% of all the costs relating solely to the residential Units on the Estate.

56. The Tribunal's interpretation of Schedule 4 of the Lease means that flat owners do not have to contribute to losses arising from the existence of unlet, non-contributing areas of the Property. Substantial parts of the Property are indeed unlet, and without a contributing freeholder or headlessor, there will always be under-recovery of the costs incurred in running the Property. This is, in the opinion of the Tribunal, an inevitable consequence of the way in which the Lease is drafted.

c. Is the 2011/12 budgeted service charge claim due under the lease (Claim 1)?

57. In its documentation, Blue provided a budget expenditure figure for 2011/12 of £347,532 made up as follows:

    a. £328,926 was allocated to "residential units" (i.e. floors 2 to 9)
    b. £10,040 was allocated to floors 10 to 12 (unlet residential floors)
    c. £4,497 was allocated to commercial units
    d. £4,069 was allocated to the car park (which are commercial units)

58. Blue invoiced the Respondent for 0.27% of the total allocated to floors 2 to 9, producing an invoice for the half year of £444 (claim 1 - bundle page 559). Reading her submissions carefully, it seems the Respondent may not have received this invoice, but as she was not present to dispute this at the hearing, the Tribunal accepts the evidence of Blue that this invoice was submitted. It was not a claim for a Maintenance Adjustment – it was the first instalment of the budgeted service charge claim due under clause 3.1 of the Lease.

59. In the opinion of the Tribunal, for the reasons set out in section b. above, the sum claimed was calculated incorrectly, as the Service Charge Proportion charged to the Respondent was not apportioned in accordance with Schedule 4. Following the methodology in paragraph 55 above, the total proposed expenditure on residential units was £338,966 (Respondent's share of 0.2263% equals £767.08) and the total expenditure on commercial units was £8,566 (Respondent's share of 0.2263% of 82.5% equals £15.99), making a total of £783.07. An equal half year charge would have been £391.54.

60. An initial charge for 2011/12 was therefore properly due in the sum of £391.54. Three payments of £66.21 each have been made towards the 2011/12 initial charge, leaving a balance due of £193.18 which the Tribunal finds would be payable by the Respondent under the Lease.

d. What Maintenance Adjustment sums are payable by the Respondent under the Lease for 2009/10, 2010/11, and for the first six months of 2011/12

2009/10 Maintenance Adjustment

61. The claim is for £273.24 (claim 2). This is explained by Blue (see bundle page 474) as a claim for the Respondents proportion of a shortfall of £106,920. That figure is obtained from the audited accounts of the Applicant to 31 March 2010. Those accounts show a loss for the year of

£110,919, because income in the form of service charges was only £251,396 against expenditure of £362,316. There is an accumulated deficit shown for previous years of £20,001, making an accumulated total loss of £130,920. The balance sheet shows a sinking fund value of £24,000 which has been set off against that loss to produce a final balance sheet valuation of the company of minus £106,920. Blue has then apportioned that figure between the contributing areas of the Property and applied 94% of it towards the residential apartments – i.e. £100,194.73. Blue's case is that the Respondent has to contribute 0.27% of that loss making £270.53. It is said by Blue that rounding factors actually produced a charge of £273.24, the amount due by the Respondent as her contribution towards the 2009/10 shortfall.

62. By using the methodology for calculation of the Maintenance Adjustment described in the previous paragraph, Blue have, the Tribunal considers, fallen into error. The key point is that the Lease only allows a claim for the lessee's proportion of the amount by which the actual expenditure exceeds the budgeted expenditure. Blue have instead sought to charge for a share of the losses incurred by the Applicant, which is mainly due to a shortfall of income over actual expenditure. Thus the Tribunal considers that the methodology adopted is based on a seriously inadequate understanding of the requirements of the Lease.

63. The position for 2009/10 has been explained in a little detail above, but the same point arises in relation to all the claims for a Maintenance Adjustment. Mr Beaumont accepted this point at the hearing, and asked the Tribunal to substitute an amended amount claimed as Maintenance Adjustment for 2009/10. He produced a single page account for each relevant year which (happily for Blue and coincidentally, as the single pages were not primarily designed for this purpose) showed the budget expenditure against actual expenditure figures. The new sheet for 2009/10 showed budgeted expenditure of £309,190 against actual expenditure of £362, 316, giving a Maintenance Adjustment figure of £53,126. Mr Beaumont asked that the Tribunal determine that the Respondent was liable to pay 0.27% of that figure, making £143.44.

64. The Tribunal had considerable difficulties with this request from Mr Beaumont, because although stages a, b, and c of the stages identified in paragraph 47 above had been complied with, the method of calculating the correct proportion to attribute to the Respondent (point d in para 47) had not been considered at all in the new sheet. There was no attempt to allocate any of the expenditure between the estate and the residential apartments, nor to carry out the further apportionment exercise considered at paragraphs 48 to 55 above, and so the calculation was flawed.

65. In its further submissions received on 22 January 2014, Blue has made a third attempt of quantify its Maintenance Adjustment calculation for 2009/10. In this submission, Blue has identified total expenditure in 2009/10 as £376,795. This is £14,479 higher that the expenditure given in the separate sheet handed to the Tribunal at the hearing (as a result of

repairs and renewals increasing from £40,758 to £55,237), with no explanation for the discrepancy given. Blue have then allocated that expenditure between the residential and commercial elements of the estate.

66. In this calculation, Blue has used an apportionment between residential and commercial of 69.17% to 30.83% by considering the three top floors to be commercial units. Using this method, this reduces the amount said to be owed by the Respondent to £925.46, which after giving credit for payments made on account means there would be a Maintenance Adjustment sum due of £130.94.

67. The Tribunal considers that there are three difficulties with even this new figure:

    a. There is the unexplained increase in repairs and renewals;

    b. Security (of £82,640) is allocated solely to the apartments whereas it seems clear to the Tribunal that these must be shared costs across the whole Property;

    c. The Tribunal disagrees (for the reasons set out in paragraphs 46 to 53 above) with the apportionment percentages used.

68. The following table shows the basis upon which the Maintenance Adjustment for 2009/10 should be calculated, using Blue's original expenditure figures, moving security into estate expenses, and adopting the Tribunals approach to apportionment.

Table 2 – Maintenance Adjustment calculation for 2009/10

		Residential	Estate
	Apr 09 - Mar-10		
Electricity	35,190	35,190	
Legal & Prof			
Insurance	39,616		39,616
Repairs, Renewals	40,758	40,758	
Accountancy	4,900		4,900
Refuse Collection	7,129	7,129	
Management	56,400		56,400
Fire Risk Ass	4,213		4,213
Health & Safety Risk Assessment	4,213		4,213
Bank Charges	1,039		1,039
Miscellaneous			
Telephone & Stationery	2,377	2,377	
Ground Rent			
Security	82,640		82,640
Wages & Salaries	72,651	72,651	

Lift	10,612	10,612	
Depreciation	580	580	
Sinking Fund			
Exceptional Items			
Total	362,318	169,297	193,021
Residential contrib		100%	82.50%
%age payable by Respondent		0.2263%	0.2263%
Apt 339		383.12	360.37
Total Apt 339 contrib			743.48

69. The Respondent has already paid £794.52 for 2009/10. She is therefore entitled to a credit in the sum of £51.10 for that year.

2010/11 Maintenance Adjustment

70. The initial claim is for £128.32 (claim 3). Again, this amount was based upon an accounting deficit of £50,214 in the Applicants accounts for 2010/11. This claim suffers from the same misconception as the 2009/10 claim, as is explained in paragraph 62 above, and a claim for this sum cannot therefore be allowed.

71. At the hearing Mr Beaumont produced a revenue account showing expenditure of £403,733 and a difference between that actual expenditure of £94,543 and on the basis of these figures argued for a sum of £255.26 (0.27% of this difference). However, that argument also suffers from the same difficulties as those discussed above at paragraph 64 above.

72. Blue's submissions received on 22 January 2014 showed a calculation of the Respondent's contribution in the sum of £1,003.24 on the same general basis as that set out in paragraph 65, making the Maintenance Adjustment claim the sum of £208.72 after giving credit for sums paid on account in that year.

73. The Tribunal adopts the same approach to the Maintenance Adjustment calculation for this year as it has for 2009/10. The amount the Tribunal allows is set out below in Table 3.

74. However, there is another issue for this year that did not need to be considered for the earlier year. The claimed "expenditure" of £403,733 includes an amount of £20,000 towards a sinking fund. It is entirely proper to collect for a sinking fund, but such sums, which are effectively pre-payments towards future liabilities, are to be held on trust for the tenants. It is clear from the terms of the consent order under which Blue are pursuing this claim for a Maintenance Adjustment (nominally on behalf of the Applicant but in reality for their own account, on which

more later) that they should be seeking to collect towards expenditure actually incurred in 2010/11. As the Tribunal finds the collection of a sinking fund does not represent actual expenditure in 2010/11, it determines that the sinking fund amount cannot be considered to be an expense that the Applicant or Blue can collect. The calculation of the Respondent's contribution will therefore be based on expenditure of £383,733 rather than £403,733.

Table 3 – Maintenance Adjustment calculation for 2010/11

		Residential	Estate
	Mar-10		
Electricity	41,976	41,976	
Legal & Professional			
Insurance	37,430		37,430
Repairs, Renewals & Cleaning	37,017	37,017	
Accountancy	4,900		4,900
Refuse Collection	7,379	7,379	
Management	56,700		56,700
Fire Risk Assessment	2,106		2,106
Health & Safety Risk Assessment	2,106		2,106
Bank Charges	1,067		1,067
Miscellaneous			
Telephone & Stationery	1,604	1,604	
Ground Rent			
Security	87,625		87,625
Wages & Salaries	77,331	77,331	
Lift	26,172	26,172	
Depreciation	320	320	
Sinking Fund	0	0	
Total	383,733	191,799	191,934
Resid contrib		100%	82.50%
		0.2263%	0.2263%
Apt 339		434.04	358.34
Total Apt 339 contrib			792.38

75. The Respondent has already paid £794.52 for 2010/11. She is therefore entitled to a credit in the sum of £2.14 for that year.

76. Except in relation to the sinking fund, for both the 2009/10 and 2010/11 years, the Tribunal has accepted the actual expenditure figures submitted by Blue, save where these have been inconsistent, when the Tribunal has accepted the lower figure. The Tribunal has adjusted the allocation of

that expenditure in one situation (security cost) where it seemed to the Tribunal that the allocation was clearly wrong. In all other respects, the figures submitted by Blue have been accepted. Two additional points need however to be made:

a. The first occasion that Blue produced any document showing a shortfall of actual against budgeted expenditure (as required by the Lease) was the hearing of this case. Even then, the calculations were wide of the mark in complying with the requirements in Part 1 of Schedule 4 of the Lease.

b. On the basis of the revised methodology accepted by Blue at the hearing, and the new documents produced on that day, the Tribunal notes that for the year 2008/09 there was in fact an underspend against budget, for which the Respondent would be entitled to a credit. The further submissions received on 22 January 2014 contained a second set of figures for 2008/09 with a substantially increased expenditure figure. There is no claim in this case for any Maintenance Adjustment for 2008/09, and this is therefore not an issue relevant to this case. It is however to be noted that Blue have not been able to produce consistent and stable figures, even for this Tribunal, and the Respondent may still be entitled to a credit for 2008/09.

The first six months of 2011/12

77. The claim under this head is £212.49 (claim 6). For the 2011/12 year, accounts have only been provided for six months. In the case of Mrs V P Grey v Marco Developments Ltd (BIR/00FY/LSC/2012/0055) the same Tribunal as is determining this case considered whether a lessee was liable to pay a Maintenance Adjustment charge for this six month period. In giving its reasons in that decision for refusing to allow the charge, the Tribunal said (at para 27):

"the Lease provides no right for the landlord (and therefore any of its managing agents) to make an additional charge part way through a year in relation to any excess charge. The terms of para 3 of Part 3 of Schedule 4 are quite clear. Service charges are dealt with on an annual basis. An account must be provided showing the variance between budgeted expenditure and actual expenditure at the end of the service charge year. That sum may be collected if there is shortfall at the end of that year, not part way through it. There is no right under the Lease for an excess charge to be applied part way through the service charge year."

78. This decision (though not the text of the extract referred to above) was drawn to Mr Beaumont's attention during the hearing. He sought to argue that there was no necessity to make such a distinction in relation to the six month period, as the actual amount payable for 2011/12 would merely be the addition of two figures produced on two different documents rather than the same document. The Tribunal is not persuaded that its earlier decision is incorrect. It has no knowledge at all

of the outcome for the final six months of the year. It is possible there was a surplus during that period which would balance off the deficit in the first six months (if there is a deficit). The Respondent is entitled to a single account covering the whole year, with the required information establishing and supporting that charge made available to her. The Tribunal determines that under the Lease, it cannot make a determination of a Maintenance Adjustment charge for only part of a year.

79. If the Tribunal is incorrect on this point, Appendix 1 shows the calculations of the Maintenance Adjustment for the period 1 April to 30 September 2011 using the methodology adopted by the Tribunal for the two previous years, and the expenditure figures supplied by Blue. Consistently with 2009/10 and 2010/11, security cost has been moved into "Estate" costs. A total sum of £409.65 would be due. After payment of £391.54 which the Tribunal has already determined would be the correct initial charge (see paragraph 60 above), a further £18.11 would be payable. Of course credit for the sum actually paid by the Respondent of £198.63 would also need to be given.

e. Are the administration charge claims payable?

80. The Tribunal's role is to consider whether the administration charge claims are lawful (i.e whether there is a legal basis to support the Applicant's or Blue's right to claim them) and if so whether they are reasonable, as they are only payable to the extent that they are reasonable.

81. In this case, the Tribunal finds that:

    a. For the reasons set out in paragraphs 90 and 91 below, there is no legal basis for either the Applicant or Blue to claim sums under Schedule 3 para 1.2 of the Lease.

    b. If the Tribunal is wrong on point a, there is a reasonable basis for the Respondent and the other lessees losing trust in the Applicant and in Blue arising from the correspondence they received from the receivers agents which has been identified above. In particular, those agents put in writing to the lessees that there were problems with the provision of information, lack of proper accounting, compliance with health and safety, whether sinking fund monies were being dealt with properly, and whether anyone was taking these issues seriously.

    c. That reasonable concern has been borne out before this Tribunal, in that Blue accepted at the hearing that their accounting methodology was incorrect. The amounts found to be due by the Tribunal differ significantly from the amounts claimed. The quality of Blue's explanations and justifications to the Respondent for claiming sums from her has been very poor. It seems entirely reasonable to the Tribunal that mere presentation of an invoice with an assertion that

it is due, unsupported by the information establishing that, is likely to result in a recipient not wishing to pay until the basis for the invoice has been established, and it is not reasonable for Blue to respond by adding significant additional charges to the Respondent's account.

d. Blue has raised no less than eight invoices for sending letters or statements pursuing the service charge for which it seeks an administration charge. Two of those were for contacting the Respondent's mortgagee. The Tribunal can see no value to Blue in making those contacts. It is the case that mortgagee's will sometimes pay charges to avoid the risk of forfeiture, but neither Blue nor the Applicant had the right to seek forfeiture of any lease once the receivers had been appointed. The other six letters or statements were straightforward demands which the Tribunal finds it was not reasonable to make at all, as the sums claimed were wrongly calculated and full information to justify them had not been provided. If it is wrong on this point, it considers that there were an excessive number of demands, for which an excessive fee was charged.

82. These are significant factors, which in the opinion of the Tribunal justify the Respondent withholding payment until legal liability for payment was established. Had the Applicant or Blue provided accurate information and the documents in support required under the Lease, and the Respondent had still not paid, the Tribunal can see a justification for a lessor then charging fees for pursuing that debt (though Blue was not in the position of lessor in any event). As the charges levied were incorrect, the Tribunal determines that all the administration charges sought in this case had no legal basis and in any event were unreasonably incurred and that they are not therefore payable by the Respondent.

f. Who is entitled to collect any sums found to be due by the Respondent under the Lease?

83. In this decision, the Tribunal has determined that a small amount is payable by the Respondent as her initial payment for the 2011/12 service charge year. To whom should this sum be paid?

84. The Applicant, as landlord under the Lease, and the party with whom the Respondent has contracted, would clearly have been entitled but for the appointment of receivers. The Applicant is entitled, if it wishes, to appoint an agent, and give that agent authority to do all things that the Applicant would otherwise be able to do. But for the receivership of the Applicant, Blue would have been entitled, as landlords agent, to receipt of sums due under the Lease.

85. The appointment of receivers by Royal Bank of Scotland however changes the position. The Tribunal has seen neither the mortgage deed nor the appointment documentation. It has to work on the basis that all these documents are in place and valid so the charge was validly created

and the appointment of receivers validly made. No party has challenged this, and the receivers have been aware of these proceedings. That being the case, the legal effect of the appointment of Law of Property Act receivers is that those receivers step into the shoes of the Applicant and have all the rights available to the Applicant under the Lease. The Applicant's own rights cease upon the appointment.

86. It is a principle of the law of agency that the authority of the agent cannot exceed the power of the principal to act on his own behalf (see Halsbury's Laws of England (5th edition) Vol 1 paragraph 30). Upon the appointment of receivers, the Applicant's right to receipts under the Lease ceased, and so the authority of Blue as an agent of the Applicant also ceased at that point. It would have been possible for the receivers to "adopt" Blue's contract, but as appears from the facts recited above, they did not wish to do so, and did not do so, and indeed litigation ensued. The Tribunal considers that as from the date of appointment of receivers, being 13 December 2010, strictly neither the Applicant nor Blue were in law entitled to receive payments under the Lease. That right passed to the Royal Bank of Scotland's receivers.

87. Blue however continued to assert the right to collect receipts, and of course that became the subject of open disagreement with the receivers as set out above. The receivers' first clear repudiation of Blue's management role was not (on the basis of the documentation supplied to the Tribunal) until 17 June 2011, and it is probably the case that prior to that, the continued management of the Property by Blue had at least the implied sanction of the receivers. After 17 June 2011, Blue clearly had no right to manage the Property. Ultimately that dispute was subject to litigation and was settled on the terms set out above.

88. Mr Beaumont argues, in the further submissions of January 2014, that Blue are entitled to receipts from the Property up to 30 September 2011 on their own behalf as assignees of the right to those receipts by the receivers under clause 13 of the consent order in the litigation. The settlement of the proceedings was the consideration for the assignment. The Respondent has not commented on this submission.

89. In so far as it is necessary to do so, the Tribunal accepts Mr Beaumont's submission. It considers that the right to demand both the initial service charge payments for 2011/12 and payments due as a result of the Maintenance Adjustment provisions for the 2009/10. 2010/11, and 2011/12 years passed to the receivers on their appointment, and that right has been validly assigned to Blue as a result of the consent order in litigation between them. No specific words or methodology are required for an assignment of a chose in action; it is sufficient for there to be clarity about intent, and that seems clear from the consent order.

90. There are two important consequences of this decision on payability. The first is that these proceedings themselves, and in particular the County Court proceedings in the Dartmouth County Court are misconceived as they have been brought in the name of the Applicant, Marco

Developments Ltd. This Tribunal determines that Marco Developments Ltd do not have a right to claim any of the sums said to be due in the County Court proceedings, as the claims all post-date the appointment of receivers which operated to transfer the Applicant's rights under the Lease to the receivers. Blue, as agents, can have no better right than their principals, and therefore they too are not entitled, as agent of the Applicant, to the sums claimed.

91. Secondly, Blue only has the rights referred to in the consent order which have been assigned to it; it is not the landlord's agent allowing it to claim the benefit of all covenants in the Lease. In particular this means that there is no basis under the Lease for Blue to claim the benefit of the covenant set out in Schedule 3, paragraph 1.2 of the Lease. All the administration charges were rendered after 30 September 2011, and so neither the Applicant nor Blue possessed a right at the dates of the charges to claim administration charges under the Lease. Blue simply has the right to "collect all monies due in respect of service charge" prior to 1 October 2011. It does not have the right to render additional charges under the Lease.

92. As there is an application before the Tribunal by the Applicant for a determination of payability of outstanding service charges, which has been litigated by Blue in the name of the Applicant, the Tribunal considers that it will assist the parties to clarify that in its view Blue would have a case for pursuing the 2011/12 budgeted service charge claim in the sum of £193.18 (see paragraph 60 above), against which, in the view of the Tribunal, the Respondent would be entitled to set-off the overpayments for 2009/10 and 2010/11 in the total sum of £53.24. The net sum due is therefore £139.94. Blue would be entitled to that sum as assignees from the receivers of the right to claim service charges up to 1 October 2011. The Tribunal notes that Blue has not yet litigated any claims on its own behalf.

Summary

93. The Tribunal determines that the Applicant is not entitled to any sums claimed in the County Court proceedings in Dartford County Court under case reference 2QZ54554, whether claimed as service charges or administration charges.

Appeal

94. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which

that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal

Date 17 FEB 2014

Appendix 1 – Tribunal's calculation of Maintenance Adjustment for 1 April to 30 September 2011, were it to be recoverable.

		Residential	Estate
	Sep-11		
Electricity	14,793	14,793	
Legal & Professional			
Insurance	22,062		22,062
Repairs, Renewals & Cleaning	22,600	22,600	
Accountancy	2,850		2,850
Refuse Collection	3,138	3,138	
Management	33,211		33,211
Fire Risk Assessment	1,053		1,053
Health & Safety Risk Assessment	1,053		1,053
Bank Charges	174		174
Miscellaneous		0	
Telephone & Stationery	871	871	
Ground Rent			
Security	47,689		47,689
Wages & Salaries	37,440	37,440	
Lift	9,429	9,429	
Exceptional Items	3,607	3,607	
	199,970	91,878	108,092
Resid contrib		100%	82.50%
Apt 339		0.2263%	0.2263%
		207.92	201.81
Total Apt 339 contrib			409.72