



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00BK/LSC/2018/0365**

**Property** : **Flat 5, 41 Craven Hill Gardens,  
London W2 3EA**

**Applicant** : **38/41 CHG Residents Company  
Limited (“CHG”)**

**Representative** : **Dale & Dale Solicitors Limited**

**Respondent** : **Ms Iris Hyslop**

**Representative** : **N/A**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **(1) Judge Amran Vance  
(2) Mr H Geddes  
(3) Mr Alan Ring**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **15 April 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal makes the determinations set out under the headings below in respect of Ms Hyslop's liability to pay service charge costs for the 2016/17 and 2017/18 service charge years (actual costs) and 2018/19 budgeted costs.
- (2) We are unable to determine the specific sums payable by Ms Hyslop for the service charges years in dispute, because the applicant has agreed to make multiple adjustments to her service charge account, having regard to determinations made in our previous decision in application LON/00BK/LSC/2015/0437, where we disallowed certain heads of expenditure, that were repeated in the service charge years in issue in this application. Following receipt of this decision the parties should seek to agree the sums payable by her, or the amount of refund due to her. Only if they are unable to reach agreement should they send their respective calculations to the tribunal and we will then determine the sum payable in a supplemental decision.

## **Background**

- (3) In this application, issued on 4 October 2018, CHG seek a determination pursuant to s.27A of the Landlord and tenant Act 1985 ("the 1985 Act" as to Ms Hyslop's service charge liability for the service charge years ending 31 March 2017, 2018 and 2019, in respect of 39 and 41 Craven Hill Gardens, London W2 3EA ("the Building"). The Building comprises two adjoining buildings, each comprising 18 flats. Ms Hyslop is the long leaseholder of Flat 5, 41 Craven Hill Gardens. CHG is the freeholder of the Building.
- (4) There has been very substantial previous litigation between the parties. The most recent tribunal application is LON/00BK/LSC/2015/0437, which was the subject of a determination issued on 19 November 2018, and a subsequent decision in respect of a residual issue, that is to be issued at the same time as this decision. That earlier application concerned Ms Hyslop's service charge liability for the 2014/15 and 2015/16 service charge years. Details of four previous tribunal applications, dating back to 19 November 2001, are referred to in paragraph 6 of the decision issued on 19 November 2018,
- (5) A case management hearing in respect of this new application took place on 15 November 2018. Directions were given at that hearing, and issued on 19 November 2018. They were varied on 20 December 2018, and the application proceeded to a final hearing on 20 and 21 March 2019. Ms Hyslop attended in person and CHG were represented by Mr Comport, of Dale & Dale, solicitors. Mr Gream, one of the directors of CHG, was also present. We heard oral evidence,

including cross examination, from both Mr Gream and Ms Hyslop. Both had provided witness statements in advance of the hearing.

- (6) Numbers in square brackets and in bold below refer to the hearing bundle prepared by the applicant for this determination.

### **The Lease**

- (7) Ms Hyslop's lease ("the Lease") was granted on 26 September 1997, commencing 25 March 1976, for a term of 99 years.

- (8) It includes the following terms in respect of service charge liability:

4. The Lessee hereby covenants with the lessor and with and for the benefit of the lessees and occupiers from time to time during the currency of the term hereby granted of the other flats that the Lessee will at all times hereafter during the said term:-

(1) – (3) .....

- (4) Pay to the Lessor without any deduction by way of further or additional rent (together with any Value Added Tax or other tax payable):

(i) A sum equal to the percentage set out against the demised premises in Column A of the Seventh Schedule hereto of the total of the General Expenses as defined in the Eight Schedule hereto of each year ending 31<sup>st</sup> March; and

(ii) (with the exception of Flats 1 to 4 of each of 39 and 41 Craven Hill Gardens aforesaid) a sum equal to the percentage set out against the demised premises in Column B of the Seventh Schedule hereto of the total of the Lift Expenses (as defined in the Eighth Schedule hereto) of each year ending 31<sup>st</sup> March;

such further and additional rent (hereinafter referred to as the 'service charge') to be paid as follows:

(a) – (c) .....

(d) The Lessee shall if required by the Lessor with the payment of rent reserved hereunder pay to the Lessor such sum in advance and on account of the service charge as the Lessor or its Managing Agents in their absolute discretion shall specify...

(e) as soon as practicable after the signature of the Certificate the Lessor shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account there shall be paid by the Lessee to the Lessor the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Lessor to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may require.

(9) The Fifth Schedule of the Lease provides as follows:

THE FIFTH SCHEDULE

(Expenses and outgoings and other heads of expenditure of the Lessor of which the Lessee is to pay a proportionate part by way of Service Charge).

- (1) The expenses of maintaining and repairing redecorating and renewing amending cleaning and re-pointing repainting graining varnishing whitening or colouring the building and all parts thereof and all the appurtenances apparatus and other things thereto belonging and more particularly described in Clause 5(6) hereof.
- (2) The cost of insuring and keeping insured throughout the term hereby granted the building and all parts thereof and the fixtures and fittings therein and all the appurtenances apparatus and other things thereto belonging as more particularly described in clause 5(2) hereof and also against third-party risks and such other risks (if any) by way of comprehensive insurance as the Lessor shall determine including three years loss of rent and architects and surveyor's fees.
- (3) The cost of decorating and the cost of maintenance or repair and otherwise in accordance with clauses 5(7), 5(9), 5(10), 5(11), 5(12) and 5(13) hereof
- (4) .....
- (5) The cost of keeping any parts of the building not specifically referred to in this Schedule in good repair and condition except those parts of the building to which the provisions of sub-clause 5(4) hereof apply.

- (6) The fees of the Managing Agents for the Lessor for the collection of the rents of the flats in the building and for the general management thereof
  - (7) All fees and costs incurred in respect of the annual certificate and of accounts kept and audits made the purpose thereof
  - (8) The cost of taking all steps deemed desirable or expedient by the Lessor for complying with making representations against or otherwise contesting the incidence or the provisions of any legislation or orders or statutory requirements thereunder concerning town planning public health highways streets drainage or other matters relating to or alleged to relate to the building and for which the Lessee is not directly liable hereunder (including but without prejudice to the generality of the foregoing the provision of fire fighting equipment and the compliance with fire regulations).
  - (9) .....
  - (10) The cost of providing a sinking fund to allow for reasonable expenses hereinbefore referred to in respect of subsequent years the amount of such sinking fund being at the absolute discretion of the Managing Agents for the time being of the Lessor
  - (11) The cost of any service or maintenance or similar contracts entered into the Lessor in relation to the whole or any part or parts of the building including the lift and other equipment referred to in Clause 5(10) hereof and any other equipment or installation of the building
- (10) The Seventh Schedule makes the following provision in respect of apportionment of service charges:

THE SEVENTH SCHEDULE

(Percentage of General Expenses and Lift Expenses attributable to each Flat)

Column A

Column B

Percentage of General Expenses    Percentage of Lift Expenses

Flat 5

2.50%

3.50%

### **The Hearing**

- (11) CHG's position is that Ms Hyslop is liable to pay the following sums by way of service charge and that the sums were reasonably incurred:

#### 2016/17 Service Charge year

- (a) £1,250.21, comprising a 2.5% contribution to General Expenses incurred in the sum of £50,008.61 **[153]**;
- (b) £248.56, comprising a 3.5% contribution towards Lift Expenses incurred in the sum of £7,101.74 **[154]**; and
- (c) £750, being a 2.5% contribution towards a reserve fund demand in the sum of £30,000.
- (d) However, CHG considered that Ms Hyslop was entitled to a credit in the sum of £14.02, resulting from the tribunal's decision in LON/00BK/LSC/2015/0437, that certain costs were not payable by her under the terms of her Lease as they constituted company expenses.
- (e) The total sum that the applicant considered was payable by Ms Hyslop for this service charge year was therefore £2,234.76.

#### 2017/18 Service Charge year

- (a) £1,312.42, comprising a 2.5% contribution to General Expenses incurred in the sum of £52,496.96 **[182]**;
- (b) £372.45, comprising a 3.5% contribution towards Lift Expenses incurred in the sum of £10,641.59 **[183]**; and
- (c) £625, being a 2.5% contribution towards a reserve fund demand in the sum of £25,000.
- (d) However, CHG considered that Ms Hyslop was entitled to a credit in the sum of £163.36 resulting from the tribunal's decision in LON/00BK/LSC/2015/0437, that certain costs were not payable by her under the terms of her Lease as they constituted company expenses.

(e) The total sum that the applicant considered was payable by Ms Hyslop for this service charge year was therefore £2,146.51.

- (12) In accordance with the tribunal's directions, Ms Hyslop set out her challenges to the service charge costs she disputed in the form of a Scott Schedule **[142]**. Her challenges were based on her inspection of invoices held by CHG relating to costs it incurred in the service charge years in dispute. At the hearing, we dealt with each item on that Schedule in turn, hearing representations from both parties and evidence, as necessary, from Mr Gream and Ms Hyslop. We address each item raised by Ms Hyslop in the Schedule in the paragraphs that follow, adopting her description of each item under challenge.

### 2016/17 Service Charge year

#### *Company Accounts*

- (13) In her Scott Schedule Ms Hyslop queried sums of £360 **[160]** for preparation of CHG's company accounts; accounting fees of £1,556 and £16.60 corporation tax paid out of service charge funds on behalf of CHG **[161]**; as well as £25 for electronic confirmation of company records **[162]**. At the hearing, Mr Gream accepted that she had no liability to contribute towards these sums, and that her account would be credited accordingly. In its comments in the Scott Schedule the applicant stated that Ms Hyslop had already received a credit for this sum, but during the hearing Mr Gream stated that it appeared that the credit adjustment had not yet been made. In light of the applicant's concession, Ms Hyslop confirmed that she had no further challenge to these costs.

#### *LVT Documents*

- (14) Ms Hyslop challenged the sum of £100, incurred for postal expenses, relating to correspondence with the tribunal and preparation of bundles **[162]**. Again, in its comments in the Scott Schedule the applicant stated that Ms Hyslop had already received a credit for this sum, although it appears that this has not yet been made. In light of the applicant's concession that she was not liable to contribute towards these costs, Ms Hyslop confirmed that she had no further challenge.

#### *Shareholders Charges*

- (15) Ms Hyslop queried costs of £125 **[163]** and £135 **[170]** described in the invoices as payments for the hire of a hall for residents' meetings. Mr Gream confirmed that that was the reason for the expenditure and that one meeting is held each year. In response, Ms Hyslop said that she had no evidence to suggest that residents' meetings did not take

place as stated, but she did not think notice of the meeting was fixed to the notice board in the hallway.

- (16) We see no reason to doubt Mr Gream's evidence as to why these costs were incurred, as corroborated by the descriptions in the invoices. We consider that hire of a hall to hold a residents' meeting is payable under paragraph 6 of the Fifth Schedule as a cost of managing the Building and although Mr Gream initially paid the cost himself, it was ultimately paid for by F W Gapp, the managing agents. There is no evidence before us to indicate that the amount incurred is unreasonable.

#### *Directors Insurance*

- (17) Mr Gream confirmed that given the tribunal's determination in LON/00BK/LSC/2015/0437, Ms Hyslop would receive a credit for her contribution towards the sum of £425.38 included as expenditure in the annual accounts for Directors' and Officers' insurance **[153]**. Ms Hyslop agreed that this disposed of her challenge.

#### *Maintenance*

- (18) Ms Hyslop challenged an invoice from SAWS Property and Grounds Maintenance for £150 **[164]**. The invoice records that the work in question was for the removal of items stored within the storage cupboard/bin store for 41 Craven Hill Gardens. Ms Hyslop agreed with Mr Gream that this area is a bin store and not a storage area. Mr Gream explained that, unfortunately, residents left personal belongings there, such as bicycles and that every few years the area has to be cleaned out. Ms Hyslop suggested that this work was not carried out and that bicycles are still present. We see no reason to doubt Mr Gream's evidence that these costs were incurred for the reasons stated in the description in the invoice and determine that the cost is payable by Ms Hyslop as a cost of maintaining the Building.
- (19) Two invoices from Lyndon Maintenance dated 14 April 2016, both in the sum of £282, were queried by Ms Hyslop. The invoices are identical, and Ms Hyslop suggested that the same invoice has been paid twice, as indicated by payment stamps on the two invoices. The description of the work carried out in the invoices concerns the fixing of carpets in the communal areas of 41 Craven Hill Gardens. In its response in the Scott Schedule, CHG conceded that this appeared to be a duplicate payment of the same invoice, but that as Lyndon Maintenance had gone into liquidation, and the position could not be clarified, the sum was still payable by Ms Hyslop. However, at the hearing Mr Gream agreed to waive one of the invoices. One payment of £282 is therefore not payable by Ms Hyslop.



## *Repairs*

- (20) Ms Hyslop challenged an invoice for £1,460.400 from AS Ramsay Building Contractors for works described in the invoice as relating to water ingress repair works, comprising extending scaffolding to access the chimney and the supply and installation of a new chimney pot and cowl. Mr Gream's evidence was this work resulted from damp and water ingress along the party wall between number 39 and 37 Craven Hill Gardens, affecting flat 39, situated at the top of the Building. Ms Hyslop did not dispute his evidence, and accepted that this work was carried out. She made no challenge to the amount incurred or the quality of the work carried out and, as such, we determine that the cost is payable by her. She accepted that consequential internal redecoration works in the sum of £1,464 **[168]** were payable by her.
- (21) Ms Hyslop initially queried an invoice for £2,340 **[169]** concerning the alteration of scaffolding to enable access for gas main repair works, but at the hearing agreed that this sum was payable by her. Mr Gream explained that scaffolding in place for the purposes of major works had to be moved to allow this repair.

## *Managing Agents Fees*

- (22) In her Scott Schedule Ms Hyslop queried costs specified in the accounts in the sum of £14,479.40 **[153]**. The applicant's response indicated that these costs concerned FW Gapp's fees for managing the Building. Ms Hyslop's only comment in the Scott Schedule was "what are their duties".
- (23) As the applicant had not included FW Gapp's invoices in the hearing bundle, nor a copy of its management agreement with CHG, we requested that copies be produced on the second day of the hearing. An examination of the invoices shows that FW Gapp's charges were calculated at £312.13 per unit, including VAT, per annum, across the 38 residential flats.
- (24) At the hearing, Ms Hyslop argued that as she has been previously been told to direct all her communications to Mr Gream directly, rather than to the agents, she should not have to pay towards managing agents' fees. She also complained that FW Gapp refuse to give her receipts for documents she delivers to them, and that when she attended their offices to deliver a skeleton argument for the previous tribunal application, they refused to accept it. Mr Gream informed us that a few weeks previously Ms Hyslop had been told to direct all communications to Mr Comport, CHG's solicitor.
- (25) We have concerns about the instruction that all communications from Ms Hyslop be directed to Mr Comport. We recognise why this

instruction was given, having regard to the history of litigation between the parties, including prosecutions in the magistrates' court initiated by Ms Hyslop. However, it does not seem appropriate to us to shut off Ms Hyslop from contacting the agents altogether. It cannot be right, as Mr Gream suggested in his response to a question from us, that Ms Hyslop must contact Mr Comport even in the case of an emergency in the Building such as a burst pipe when such an incident could occur when his offices are closed. Further, one of the FW Gapp's responsibilities under its management agreement with CHG is to deal directly with tenants, including arbitrating in disputes between them, if required. We suggest that this instruction is reviewed. It is clearly appropriate for communications from Ms Hyslop regarding this application, or other actual or anticipated litigation, to be directed to Mr Comport. However, we do not see why Ms Hyslop should be prevented from contacting the Managing agents if she has concerns regarding issues such as the repair and management of the Building.

- (26) Despite these concerns, we are satisfied that the sum of £312.13 per unit, including VAT is payable by Ms Hyslop. Ms Hyslop did not produce any alternative quotes from agents or other evidence that these costs were unreasonable. The agent's duties under the management agreement include managing the Building, collecting service charges, paying invoices for costs incurred in management, maintaining management information sufficient for preparation of the accounts, maintaining the Building in good repair, entering into service contracts, and insuring the Building. Even allowing for the difficulties Ms Hyslop experienced in communicating with them, we consider a fee in this amount is reasonable given the work undertaken by the agents.
- (27) However, we determine that Ms Hyslop's liability should be limited to her contribution of the sum of the invoices presented by FW Gapp, which total £14,233.13. We do so as Mr Gream could not explain the variation between that figure and the figure of £14,479.40 that appears in the accounts.

#### *Lift Maintenance Contract*

- (28) In her Scott Schedule, Ms Hyslop queried the sum of £527.62 [171], but accepted at the hearing that this was a credit sum carried over from the previous service charge year and did not pursue her challenge further.

#### *General Repairs*

- (29) Ms Hyslop challenged an invoice in the sum of £540 [172] from Finnegan Property Services for preparation of an inspection report concerning Flat 18, 39 Craven Hill Gardens. Mr Gream's case was that there had been significant water ingress into this flat and several inspections were required to remedy the problem. Ms Hyslop queried why several reports were needed. However, there is no evidence to suggest that multiple reports were prepared; the invoice refers to only one. Nor is there any evidence to suggest that the work undertaken was unnecessary and there is no challenge to the amount of costs incurred. We accept Mr Gream's evidence that this was a problem that went on for 3-6 months and determine that the cost is payable by Ms Hyslop.
- (30) Ms Hyslop also challenged the sum of £78 for work to repair a locked shutter, suggesting that this should be billed to the leaseholder of the flat concerned. Mr Gream's evidence was that when access to the roof was being sought, a key to the lock in the skylight of flat 18, 39 Craven Hill Gardens snapped, and a locksmith was needed to resolve the problem. We accept that this was a cost, albeit an unforeseen one, that arose during an inspection of the roof of the Building and that it is payable by Ms Hyslop under paragraph 1 of Schedule Five of the lease.

#### 2017/18 Service Charge year

##### *Accountancy Fees*

- (31) Ms Hyslop challenged accountancy costs invoiced by S J Males & Co in the sum of £1,620 [18]. She considered that these related to preparation of audited accounts and that the costs incurred were unreasonable, as an audit was unnecessary.
- (32) We agree with Ms Hyslop that an audit of service charge accounts is unnecessary for a landlord company of this size, and having regard to the amount of money that passes through the service charge account. We understand why she concluded that S J Males carried out a full audit, given that on the first page of the accounts [180], the accountants state that they audited the accounts.
- (33) However, Mr Gream's evidence was that the accountants do not carry out a full audit, and that the sum of £1,620 was for their preparation of the service charge accounts. In our view it is unlikely that full audited accounts could have been secured at a cost of £1,350 plus VAT. We therefore accept as credible Mr Gream's evidence that the S J Males were not instructed to carry out an audit of the accounts and that the costs refer to preparation of the accounts. Even if that conclusion is wrong, and S J Males did carry out an audit, as well as preparing the accounts, in our determination the costs incurred, of £1,620 were not unreasonable. They amount to £35.53 plus VAT per lessee, and costs in that amount would not be unreasonable if the only

work that was carried out was preparation of the service charge accounts alone. Ms Hyslop did not contact any other accountants to secure alternative quotes and in our opinion, costs in this sum are not unreasonable. However, for future years, CHG should, clarify whether S J Males are carrying out a full audit and, if not why this is suggested in the service charge accounts.

#### *Annual Lift Audit*

- (34) Ms Hyslop challenged an invoice in the sum of £799.33 **[194]** for fees described as being for an annual lift audit. Mr Gream stated that this concerned a health and safety inspection required in order to secure insurance for the lift. Ms Hyslop's argument was that this cost should be covered by the lift maintenance contract. We disagree, this is an entirely separate issue to a maintenance contract, which Mr Gream informed us is held by a different company. We accept as credible Mr Gream's explanation that the audit was required as a prerequisite to providing insurance cover for the lift. Ms Hyslop had no evidence to the contrary and did not challenge the amount of the cost incurred. We determine it was reasonably incurred and is payable by her.

#### *Directors Insurance*

- (35) The applicant conceded in its comments to the Scott Schedule that this item, in the sum of £419 was not payable by Ms Hyslop given our determination in LON/00BK/LSC/2015/0437 and that a credit in her apportioned share will be paid to her.

#### *Health & Safety*

- (36) We reject Ms Hyslop's challenge to this item, at a cost of £25.72 **[196]**, which Mr Gream explained concerned the fire brigade's instruction that a Fire Evacuation Plan needed to be placed on the notice board of each building. Ms Hyslop acknowledged that there might be a plan on the notice board and we therefore accept Mr Gream's evidence. The amount is clearly reasonable, and we determine it is payable by Ms Hyslop.
- (37) Ms Hyslop also challenged an invoice in the sum of £210 **[197]** on the basis that the work described in the invoice was to visit the Building to test a lightning protection system. However, it is then stated in the invoice that no system was found. She considered the inspection pointless.
- (38) Mr Gream's evidence was that the purpose of the visit was to identify if a lightning protection system was in place. There is no evidence to the contrary and we consider that it is not unreasonable for a landlord

to incur a one-off expense to identify if a Building contained such a system. We determine the sum is payable by Ms Hyslop.

- (39) Ms Hyslop also challenged the need for an asbestos inspection, invoiced at a cost of £480 **[198]**. However, given Mr Gream's explanation that there are asbestos panels present in the risers in the stairwells, and asbestos present in the lift motor room, we accept that it is reasonable to carry out periodic asbestos inspections. There is no challenge to the amount incurred and we determine that the sum was reasonably incurred and is payable by Ms Hyslop.
- (40) Although in her Scott Schedule Ms Hyslop queried an invoice in the sum of £559.64 for the provision of signage, she dropped that challenge at the hearing, following the explanation provided by CHG in its Scott Schedule that only £10.50 of that sum related to this Building.

#### *Maintenance*

- (41) Although Ms Hyslop listed this item of expenditure in her Scott Schedule, she confirmed at the hearing that it was not being challenged.

#### *Repairs - Electrical*

- (42) Ms Hyslop challenged an invoice in the sum of £282 **[203]** concerning the supply and installation of LED motion sensor floodlights to the entrance porch area of the Building. Her complaint was that the system works erratically. However, she acknowledged that she had not raised the issue with CHG and she provided no examples of when and how the system operated erratically in her Scott Schedule, statement of case, or witness statement. In the absence of such evidence we determine that the cost was reasonably incurred and is payable by Ms Hyslop.
- (43) She also challenged an invoice for £198 **[205]** for attending the Building and checking bathroom lights, suggesting that this should be paid by the leaseholder of the individual flat concerned. We determine the sum is payable by her and accept Mr Gream's evidence that the inspection was needed following water penetration into the flat through the structure of the Building. Ms Hyslop's suggestion is pure speculation and we consider Mr Gream is better placed to identify the purpose of the inspection.

#### *Repairs – Plumbing and drainage*

- (44) Ms Hyslop advanced the same argument in respect of an invoice for £90 **[207]** for a contractor who investigated a leak at Flat 12, 41

Craven Hill Gardens in which it examined underneath the bath and behind the WC. She argued that this should be paid by the leaseholder of the flat. We disagree, for the reason advanced by Mr Gream, namely that CHG had to arrange an inspection due to uncertainty as to whether the water leak was emanating from the flat itself, or if a structural problem was causing damp penetration. We also accept as reasonable, his evidence that it would have been inappropriate for an insurance claim to be made for this inspection, as the amount invoiced was within the excess under the buildings insurance policy. To make such a claim would also impact on the applicant's claims record. The cost was reasonably incurred, in our view, and is payable by Ms Hyslop.

- (45) In her Scott Schedule Ms Hyslop had included a challenge to the cost of works relating to removal of a redundant compactor unit located in the bin area of the Building. However, that challenge was not pursued at the hearing.

#### *Repairs - General*

- (46) Ms Hyslop queried why the sum of £11.04 was incurred in respect of a filing tray **[206]**. Mr Gream explained that the tray was placed in the common hallway of the Building, so that residents could utilise it for unwanted post, that was to be returned to the sender. Ms Hyslop suggested this was unnecessary, but we accept that it was of use to residents, that the expenditure was reasonably incurred, and that the cost is payable by Ms Hyslop.
- (47) She also challenged an invoice in the amount of £240 for cleaning and removing rubbish from the front balcony, including water jetting **[220]**. Photographs shown to us at the hearing indicate that the Building has a mansard roof. Mr Gream explained that the roof leads to a concealed gutter, with a hidden rainwater outlet, behind a parapet wall, and that from time to time that gutter and the surrounding area must be cleaned, to remove debris, including fallen leaves. This area comprised the balconies of flats 17 and 18, and Ms Hyslop argued that that the cost should be payable by the leaseholders of those flats.
- (48) We disagree. Clause 5(6)(i) of the Lease obliges CHG to maintain, and keep in good and substantial repair and condition, the main structure of the Building, including the roof and their gutters, rain water pipes and floors. These costs fall within that covenant, and Ms Hyslop is obliged to contribute to them by virtue of paragraph 1 of the Fifth Schedule. There is no evidence to suggest that these costs were not reasonably incurred and we determine they are payable by Ms Hyslop.
- (49) Also challenged by Ms Hyslop was an invoice for £120 for investigating damp in Flat 1. Again, she suggested this should be payable by the leaseholder of the Flat concerned. Again, we disagree.

We accept Mr Gream's evidence that these costs were incurred to investigate the cause of damp affecting the exterior wall of this lower ground floor flat. Ms Hyslop suggests that because the invoice records that no leak was found from other flats, there was no need for the inspection. However, a landlord who has reason to suspect that dampness affecting a flat might be caused by a structural problem has an obligation to investigate this. The invoice records that the source of the dampness may be penetrating dampness from the exterior of the Building. The costs clearly fall within CHG's obligations under Clause 5(6)(i) of the Lease. We determine that they were reasonably incurred and are payable by Ms Hyslop.

- (50) Ms Hyslop objected to the cost of £2,484.48 for the replacement of the leaseholders' individual mail boxes located in the hallway [223]. In her Scott Schedule, she records her challenge as being that these were "unwanted" and that mail is "diverted to wrong boxes". Mr Gream's evidence was that the previous mail boxes were the original ones installed when the Building was built in the 1970's and that they had been significantly damaged over time. They were replaced by boxes with combination locks rather than the key locks used previously. Whilst Ms Hyslop might not have wanted the boxes replaced, other residents may disagree. She accepted that the former boxes had been damaged, which she said was due to residents trying to retrieve misfiled post. In our determination, there is no evidence to suggest that CHG acted unreasonably in incurring this cost, that it was unnecessary to replace the original mail boxes, or that the cost is unreasonable in amount. The cost is payable by Ms Hyslop.

#### *Fees – Legal & Professional*

- (51) Ms Hyslop included legal costs in her Scott Schedule. The accounts show that the sum charged to the service charge account was £631.51 [182]. However, Mr Gream confirmed that Ms Hyslop has no liability to pay towards these costs, which are only payable by those leaseholders who have entered into Deeds of Variation with CHG (the background to these variations was explained in our last decision). He confirmed that Ms Hyslop's service charge account would be credited to reflect her nil liability.

#### *Managing Agents Fees*

- (52) The sum specified in the accounts for management is £14,281.84. Ms Hyslop repeated the challenge she made in respect of the costs incurred in the 2016/17 service charge year and we reject her challenge for the same reasons as stated above.
- (53) We were provided with a copy of a single invoice from FW Gapp for this year, covering the period 25 March 2017 to 23 June 2017, in FW Gapp's charges remained at £312.13 including VAT, per unit per

annum. For the reasons stated above, we determine that these costs were reasonably incurred and that the sum payable by Ms Hyslop is her apportioned share of £14,233.13.

#### *Lifts - telephone*

- (54) Ms Hyslop challenged a British Telecom bill for £218.92 **[217]** suggesting that it was not payable, as it was addressed to a third party and did not appear to concern the Building. Mr Gream explained that the bill was for the emergency telephones located in the two lifts servicing the Building, and that it was addressed to the previous managing agents of the Building, Barley Chambers. He said that from April 2017 the cost of these telephones was about £60 per month. Ms Hyslop's challenge is, once again, speculative, and we see no reason to doubt Mr Gream's evidence. The costs indicated by Mr Gream appear to us to be reasonable in amount for what is an essential service. The cost was reasonably incurred and is payable by Ms Hyslop.

#### *Major Works Expenditure*

- (55) In her Scott Schedule, Ms Hyslop queried the sum of £4,974.55, invoiced by A S Ramsay Building Contractors **[224]**. Her only comment in the Scott Schedule is "From what fund". Mr Gream's response in the Scott Schedule was that the invoice related to the costs of major works to the exterior of the Building and were funded from the service charge reserve fund. At the hearing he stated that this was the final payment made to that contractor in respect of the major works that had straddled both the 2016/17 and 2017/18 service charge years. The sum invoiced was within the sum of £9,559.03 identified in the service charge accounts as being reserve fund expenditure **[185]**.
- (56) Mr Gream's evidence answers Ms Hyslop's query, and in the absence of any substantive challenge to these costs, we determine they were reasonably incurred and are payable by her.

#### 2018/19 Budget

- (57) The budget for this year appears at **[230]**. Ms Hyslop challenged the following items of anticipated expenditure.

#### *Audit Fees - £2,472*

- (58) Ms Hyslop maintained that there was no need for audited service charge accounts to be prepared. Mr Gream's response was that £2,000 of this sum was for the preparation of unaudited service charge accounts and £400 for the preparation of company accounts, for which Ms Hyslop is not liable. For the reasons stated above, we



accept Mr Gream's evidence that these are not audited accounts (despite the description in the budget). Ms Hyslop suggested that the amount allowable should be the same as the cost incurred in the previous year, £1,620. We consider some allowance should be made for inflation and increased costs but that no satisfactory explanation has been given to warrant an increase of around 25%. We determine that the appropriate budgeted sum payable by Ms Hyslop is her contribution towards the sum of £1,800.

*Directors and Officers Insurance - £418*

- (59) Mr Gream confirmed that Ms Hyslop has no liability to contribute towards these anticipated costs.

*General Repairs - £10,000*

- (60) Although Ms Hyslop included these anticipated costs in her Scott Schedule, she confirmed at the hearing that she did not dispute them.

*Legal & professional fees - £10,000*

- (61) Mr Gream acknowledged that legal fees might not be payable by Ms Hyslop and he agreed to a budget of £1,000 to cover the possible need to instruct a professional such as a surveyor.

*Managing Agent's fees - £15,128.40*

- (62) This represents just over a 5% increase from the fees of £14,233.13 that we determined were payable for the previous service charge year. We do not accept Ms Hyslop's submission that the costs should remain static and agree with Mr Gream that a modest allowance needs to be made for an increase in costs and inflation. A 5% increase is reasonable given that the unit rate charged was the same in the past two previous service charge years.

Reserve Fund Demands

- (63) The sums demanded from leaseholders for reserve fund contributions were £30,000 in 2016/17 [**156**]; £25,000 in 2017/18 [**185**] and £20,000 for the for 2018/19 budget.
- (64) Mr Gream explained that the major works that commenced in the 2016/17 service charge year, and which involved roof replacement and structural repairs, including to the facade of the Building, cost £218,752.75. He stated that the sum of £30,000 demanded in 2016/17 was necessary to fund these works, as was the further demand of

£25,000 made in 2017/18, because at the end of the 2016/17 service charge year only about £17,000 was left in the reserve fund.

- (65) As for the 2018/19 budget, the covering letter dated 16 March 2018 from FW Gapp to leaseholders **[228]**, enclosing the budget, explained that there was about £38,671 in the general reserve, and £16,718 in the lift reserve. They state that the intention was for the £20,000 contribution to be allocated to the general reserve and that in the forthcoming year the intention was to replace the entry phone system, as well as the carrying out of some minor works.
- (66) Clause 4(d) of the Lease allows the landlord to operate a reserve fund. It operates two reserve funds. One for general expenditure and for expenditure on the lifts. In a repeat of arguments made to previous tribunals, including in the last application before us, Ms Hyslop suggested that there was a third fund, that was set up in 1977, from which money has gone missing. We stated at paragraph 61 of our previous decision that it was her contention that hundreds of thousands of pounds, possibly as much as £500,000, had been misappropriated from reserve funds. In both applications she contended that given this misappropriation, it was unreasonable for CHG to demand additional contributions from her. She argued before us that it amounted to double collection by CHG. In her Scott Schedule she also argued that she had not been provided with information as to why reserve funds were being demanded from her.
- (67) We consider Ms Hyslop must have been aware that the intention behind the collection of the reserve fund contributions for the 2016/17 and 2017/18 service charge years was to fund the ongoing major works. Mr Gream confirmed that those works had been the subject of statutory consultation, and she did not dispute this. We note that the hearing bundle for the last application contains a Notice of Intention to carry out those works dated 22 May 2015 **[144]** and a letter dated 28 August 2015 from FW Gapp to leaseholders stating that a reserve fund demand was to be issued to fund the works **[147]**. The purpose behind the collection of the 2018/19 reserve fund was made clear in FW Gapp's letter of 16 March 2018.
- (68) Ms Hyslop acknowledges that we have no jurisdiction to determine issues relating to breach of trust in respect of reserve fund monies, except to the extent that this is necessary to decide a question arising under section 27A of the 1985 Act. We do not consider it necessary in this case given that, as in the last application, Ms Hyslop was unable to say when funds were misappropriated, by whom, and in what amount, nor could she provide any evidence to corroborate her assertions. Mr Gream's position was that nobody at CHG had any idea what Ms Hyslop was referring to when she mentioned the existence of a third reserve fund.

- (69) In our determination, the sums demanded for the 2016/17 and 2017/18 reserve funds were reasonable in amount and are payable by Ms Hyslop. She has raised no substantive challenge to these costs and we consider they were reasonable in amount having regard to the cost of the major works and the amount held in the reserve fund at the end of the 2016/17 service charge year.
- (70) However, we are not persuaded that it is reasonable to budget for a £20,000 reserve fund contribution for 2018/19. When we made our last decision, we were informed by Mr Gream that a planned maintenance programme was in place for the Building and we had regard to that assurance when deciding whether reserve fund contributions for the 2014/15 and 2015/16 service charge years were payable by leaseholders.
- (71) At the hearing of this application, Mr Gream stated that there was no maintenance programme in place at the moment. He said that the only planned works for the 2018/19 service charge year were the possible entry phone works, for which quotes in the sum of around £18,000 had been received. He also suggested that within the next five years internal redecoration to the common parts was likely to be needed and that the Building's façade will need repainting in about 10 years' time.
- (72) We asked Mr Gream if he was familiar with the Service Charge Residential Management Code, 3rd Edition, published by the Royal Institution of Chartered Surveyors, and he stated that he was not. We would hope that FW Gapp are familiar with the Code but in any event, given that he is a director of the landlord company we suggest that he familiarises himself with its contents which is designed to promote desirable practices in respect of the management of residential leasehold property.
- (73) Section 9.3 of the Code deals with planned and cyclical works and states as follows:

*"You should use scheme inspections to inform a programme of planned and cyclical works. This plan should be used to inform budget calculations and reserve fund contributions and should cover a minimum period of three years. Programmes for large, more complicated developments should cover a longer period....."*

*The programme should reflect a realistic cost of maintenance including periodic redecoration work. ....Your planned and cyclical works programmes should be agreed with your client, communicated to leaseholders and be included as a note in each year's service charge budget. A budget for the cost of maintenance should be included in each year's service charge budget to ensure an adequate fund to meet the cost where permitted in the lease."*

- (74) We consider this correctly reflects best practice. Given the absence of a programme of planned and cyclical works, we do not consider it reasonable to budget for any anticipated reserve fund contribution for this service charge year. Despite the reference to planned entry phone works in FW Gapp's letter of 16 March 2018, no such works appear to have been carried out in the 2018/19 service charge year. As FW Gapp stated in that letter that £38,671 was being held in the general reserve fund, we do not see why a further reserve fund demand for 2018/19 was required, given that no major works were undertaken in 2018/19 and none appear planned for 2019/20.

### **Rule 13 Costs Application**

- (75) In its statement of case the applicant states that it will be seeking an order under Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that Ms Hyslop pay its costs in relation to this application. As agreed at the hearing, we consider the applicant should have regard to the contents of this decision before proceeding to make that application. Without prejudging such an application, it should have regard to the fact that it issued this application; Ms Hyslop is a litigant in person; it has made multiple concessions in respect of the service charges payable by her in light of our determination in LON/00BK/LSC/2015/0437; and that Ms Hyslop has succeeded in some of her challenges.
- (76) That said, we are concerned about the large number of invoices that Ms Hyslop challenged in this application. To dispute payability of costs such as those incurred in buying a filing tray, where she is liable to pay about 29 pence, raises real issues about the proportionality of such a challenge.
- (77) If CHG wish to pursue a Rule 13 costs application in respect of this application, it must be made to the tribunal within **28 days** after the date on which the tribunal issues this decision.

**Name:** Amran Vance

**Date:** 15 April 2019

## **Appendix - Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).