FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00UH/LSC/2018/0068**
Property	**:**	**Flat 75, Lakeland House, Marine Road East, Morecambe, Lancashire LA4 6AY**
Applicant	**:**	**Mrs I G Graves**
Respondent	**:**	**Lakeland House (Morecambe) Maintenance Company Limited**
Representative	**:**	**Mr D Bentham of Homestead Consultancy Services Ltd**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A** **Landlord and Tenant Act 1985 – s 20C** **Commonhold and Leasehold Reform Act 2002-Schedule 11 Paragraph 5A**
Tribunal Members	**:**	**Judge J M Going** **S D Latham MRICS**
Date of inspection and Hearing	**:**	**17th May 2019**
Date of decision	**:**	**5th June 2019**
Date of determination	**:**	**11th July 2019**

DECISION

THE DECISION

The Tribunal found that :-
(1) the service charges that had been demanded by the Respondent for the years 2012/13, 2014/15, 2015/16, 2016/17 and 2017/18 were all payable and reasonable,
(2) the Respondent should not be precluded from including the costs of the present proceedings within the service charges,
(3) there should be no order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, and
(4) there should be no further order for costs.

(It was also noted that a previous Tribunal under case reference number MAN/30UH/LSC/2014/0107 dated 5th May 2015 (the "2015 Tribunal Decision") had determined that the service charges that had been demanded by the Respondent for the year 2013/14 were payable and reasonable.)

Preliminary

1. The Applicant applied on 29th November 2018 to the First-Tier Tribunal Property Chamber (Residential Property) "the Tribunal" under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to whether service charges in respect of the Property are payable and/or reasonable. The application concerned 6 separate years, being each of the 2011-2018 service charge years.

2. The application also included separate applications for orders under section 20C of the 1985 Act to prevent the costs incurred in connection with these proceedings from being recovered as part of the service charge, and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") to reduce or extinguish an administration charge in respect of litigation costs .

3. The Tribunal issued Directions on 4th February 2019.

4. Each party provided extensive written submissions with their statements of case which were copied to the other.

5. The Tribunal inspected the development and the block of flats of which the property forms part on 17th May 2019.

6. A Hearing was subsequently held on the same day at Lancaster Court. The Applicant represented herself. The Respondent was represented by Mr D. Bentham of Homestead Consultancy Services Ltd ("Homestead") its managing agent, and also now the Company Secretary. Mrs V. Brown and Mrs A. Liu, two long-standing Directors of the Respondent, together with Ms S. Hill an employee of Homestead were also in attendance.

Facts

7. Lakeland House is a tower block of 78 purpose built flats constructed in approximately 1976 immediately overlooking the sea front at Bare Lane Morecambe. It has 10 habitable floors over a garage basement. The building fills virtually all of the site.

8. The Applicant is the owner of a flat on the top floor which she owns under a very long Underlease dated 18th October 1985 ("the Lease") with a term of approximately 990 years and made between the Respondent and the Original flat owners. It is understood that the leases of all of the flats in the development contain comparable terms and that each flat owner is a shareholder and member of the Respondent.

The Lease

9. Under clause 1 of the Lease the Lessee covenanted to pay a yearly ground rent of £25

10. The Lease obliges the Lessee to keep the interior of the Lessee's flat in good and substantial repair and condition.

11. The 7th Schedule of the Lease confirms various covenants and obligations for the Lessor including that: –

(1) the Lessor shall pay the rents reserved by the head Lease ....

(3) the Lessor shall take out and keep on foot ..... insurance .....

(6) the Lessor shall keep the hall stairs landings lifts and passages forming part of the reserved property properly furnished carpeted cleaned and in good order and shall keep adequately lighted all such parts of the reserved property as are normally lighted or as should be lighted and shall (without thereby incurring any liability for unforeseen breakdowns) keep the said lifts properly repaired and maintained and insofar as reasonably possible in permanent working order.

12. Clauses 16 and 19 of the 6th Schedule confirm that:-

"16. The Lessee shall comply with and observe any reasonable regulations which the Lessor may consistently with the provisions of this deed make to govern the use of the Flats and the Reserved property.... Any costs or expenses incurred by the Lessor in..... providing services to the Lessee and other owners of Flats or in employing caretakers, gardeners or other servants shall be deemed to have been properly incurred by the Lessor in pursuance of its obligations under the 7th Schedule notwithstanding the absence of any specific covenant by the Lessor to incur them and the Lessee shall keep the Lessor indemnified from and against the Lessee's due proportion thereof under paragraph (19) of this Schedule.....

19. The Lessee shall contribute and shall keep the Lessor indemnified from and against 1/78th the part of all costs and expenses incurred by the Lessor in carrying out its obligations under and by giving effect to the provisions of the 7th Schedule .... including paragraphs (8) to (12) inclusive of that Schedule or otherwise in relation to the estate ...."

13. Clauses 8 to 12 of the 7th Schedule reads as follows: –

"8. The Lessor shall employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule and pay their wages, commissions, fees and charges.

9. (a) From and after the 25th day of March the Lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this Schedule by charging against such costs and expenses in each year and carrying to a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future expenses, liabilities and payments, whether certain or contingent and whether obligatory or discretionary

(b) If and so far as any monies received by the Lessor from the Lessee during any year by way of contribution to the Lessors said costs and expenses are not actually expended by the Lessor during that year in pursuance of this Schedule.....the Lessor shall hold those monies (including any part thereof which may be in any such reserve fund as aforesaid) upon trust to expend them in subsequent years in pursuance of this Schedule and subject thereto upon trust for the Lessee absolutely.

10. The Lessor shall keep proper books of account of all costs and expenses incurred by it in carrying out its obligations under and giving effect to the provisions of this Schedule or otherwise in relation to the estate...

11. The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a competent chartered accountant, who shall certify the total amount of the said costs and expenses (including the audit fee of the account) for the period to which the account relates and the proportionate amount due from the Lessee..

12. The Lessor shall within 2 months of the date to which the account provided for in paragraph 10 of this Schedule is taken serve on the Lessee a notice in writing stating the total and proportionate amounts specified by and certified in accordance with the last preceding paragraph

The Applicant's Case

14. The Applicant in her statement of case contended that the service charges (including the annual ground rent payment of £25) should be limited to £1000 for each of the years in question.

15. It was not always easy to follow the focus of her submissions, but clearly she mistrusted the directors of the Management Company and refused to accept their explanations, and on occasions those of their accountants, relating to the accounts. This was despite saying at the Hearing that she did not question the independence of the accountants or the certificates that they had provided.

16. The Applicant appeared to sustain a general belief (often without being specific, except as to those matters detailed below) that works that had been undertaken, or that are now and will be required to the development have been made more expensive by what she regarded as past mismanagement by the Respondent's directors.

17. The matters highlighted in the Applicant's statement of case where she contended payments had wrongly been made were as follows:-
    (1) the honorarium of £2000 per annum paid to Mrs Brown as the Company secretary/treasurer during various of the years in question. The Applicant argued that the duties related to the management Company's "internal matters only" and that service charge payments should not be used to pay for voluntary work.
    (2) the £500 levy made in the 2014/15 service charge year for removal of asbestos panels found in the electricity meter cupboards. She referred to the removal of the panels as being illegal, legal proceedings having been taken against directors of the management Company, and provided an estimate, albeit over 2 years after the event, from a different contractor which would have put the cost at approximately £200 per flat owner
    (3) Christmas gratuities.

18. The Applicant alleged that there were unexplained financial transactions between different bank accounts held by the Respondent, and that on occasions her requests for information, papers, receipts and other documents had been deliberately and wrongly withheld by the Respondent and/or its agents.

19. She made various references to items of disrepair (including the decoration and carpeting in her flat's corridor) and the present costs of upgrading the building, as providing examples of past mismanagement. A full copy of the condition report (with photos) prepared by Leeming Associates, Chartered Building Consultants in October 2017 (the "Building Condition Report") was included with her statement of case.

The Respondent's Reply

20. The Respondent and Homestead, which had been appointed as its Managing Agents in August 2016, attempted to provide answers to each of the Applicants concerns although clearly not all those answers were accepted by the Applicant.

21. The Respondent referred to the minutes of the various AGMs whereby the honorarium paid to Mrs Brown, the former Company Secretary had been repeatedly endorsed by a substantial majority of the flat owners.

22. The Respondent disputed any allegations that the Applicant had not received proper notice of works, estimated budgets or accounts.

23. The Respondent stated that the transactions which the Applicant alleged were "unexplained" were normal movements between a current account, used for general and day-to-day transactions, and a deposit account, both of which had fluctuating balances. It was confirmed that the accounts were "audited each year by an independent accountant and all transactions checked."

24. The Respondent included a full copy of the decision made by the Tribunal under case reference MAN/30UH/LDC/2015/0005 dated 30th March 2015 (the "2015 Consultation Dispensation Decision") whereby Judges Holbrook and Bennett decided that "compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 (be) dispensed with in relation to works comprising the removal of asbestos panels from the switch room and 40 meter cupboards at Lakeland House together with environmental cleaning of those areas"

25. Homestead disputed allegations that the Applicant had been denied access to any documents to which she was statutorily entitled and exhibited various emails and letters both to the Applicant and her solicitor inviting them to their offices to view/copy financial information. The Respondent stated that those offers however had not been taken up.

26. The Respondent confirmed that Christmas gratuities had not been paid from the service charge account but rather from separate Company money.

27. The Respondent concluded its response to the Applicants Statement of case by stating "the Applicant has not given any valid reason to dispute the service charge or its reasonableness. The Applicant has only raised questions that have simple answers which have previously been provided, whether verbally by directors or at the previous Tribunal. The service charge for each year is clearly reasonable and budgeted for each year in accordance with the lease and legislation."

The Hearing

28. At the outset, Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Procedure Rules") was read out and explained. That confirms the Tribunal's overriding objective to deal with the case "fairly and justly" and the parties' obligation to co-operate with the Tribunal in furthering that objective, and that dealing with a case fairly and justly includes: –

"(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

… and

(e) avoiding delay, so far as compatible with proper consideration of the issues."

29. The limitations of its jurisdiction were also explained and that a decision would be taken on both of the applications made by the Applicant and also finally as to whether the Tribunal should make an order as to costs under Rule 13 of the Procedure Rules, if it was decided that a person has acted "unreasonably in bringing, defending or conducting proceedings"

30. The Applicant expanded on various matters referred to in her written papers and each of the service charge years were dealt with sequentially.

31. She readily reaffirmed, as had been set out in her statement of case, that she was willing to pay the £1000 which had been demanded for the 2012/2013 service charge year and did not dispute that figure.

32. The Applicant was asked as to her reasons for seeking a review of the service charges for 2013/14, which had been dealt with in the 2015 Tribunal Decision. She confirmed that she had not sought at the time to appeal the 2015 Tribunal Decision, but apparently still felt there were unexplained financial transactions.

33. The Applicant clearly disputed the £500 additional payment that had been levied in 2014/15, referred to as "illegal removal of asbestos panels by the directors" stating that the lease "did not say that it was the Directors' responsibility to deal with dangerous and hazardous materials. The board was aware about asbestos containing material in the building since 2008 but fail(ed) to take action to prevent residents to be exposed to asbestos dust."

34. The sequence of events whereby the asbestos had been discovered, the Local authority alerted, and the Health and Safety Executive had issued contravention and Prohibition Notices in February 2015 was discussed.

35. Mrs Brown readily acknowledged on behalf of the Respondent that it had been in error when previously mistakenly assuming that the meter cupboards were the responsibility of the individual flat owners rather than part of the "common parts" for which it was responsible. She also confirmed that the 2008 survey referred to in the Applicant's papers has not advised of a need for any action in respect of the same.

36. Two quotations from specialised accredited contractors were obtained before the Respondent applied to the Tribunal to be able to proceed with remediation works without delay and without complying with the consultation requirements normally required under the 1985 Act. The Applicant and some other flat owners made representations to the Tribunal (inter-alia) objecting to those consultation requirements being dispensed with.

37. Mrs Brown confirmed that the two quotations were within £1000 of each other. The Respondent's preferred contractor's contract price was £30,200 plus VAT ie £36,240. Mrs Brown explained that the further £2000 shown in the subsequent accounts related to additional fireproof plasterboarding for the 40 meter cupboards.

38. Reference was made to a separate claim relating to the removal of the asbestos instituted by the Applicant in the County Court against individual directors. It was confirmed that that claim had been dismissed, which the Applicant explained as being purely on procedural grounds. Both parties agreed that the County Court had not made any determination as to whether or not the costs paid for the works were reasonable.

39. The Applicant explained that the quotation that she had obtained in September 2017 had been on the advice of her solicitors in respect of the County Court claim. That quotation (the"AARC quote") referred to a global price of £13,300 plus VAT ie £15,960.

40. Mr Bentham contended that one should never rely on quotations, other than in response to a common specification or, which are obtained long after the event. He also confirmed that the implemented works had all been to the proper standard, all necessary certificates issued and the HSE had been fully satisfied with the same.

41. The annual honorarium £2000 paid to Mrs Brown was discussed. She confirmed that the payment was as an honorarium simply because she had not wanted to burden the Respondent with the formality of a service contract. She had not kept formal timesheets, but in response to the Tribunal's enquiry thought that her work would on average have entailed approximately 10 hours a week. It was also confirmed that the payment had ceased following Homestead being appointed as the Company Secretary and Managing Agents.

42. The annual Christmas gratuities were confirmed by Mrs Brown and Mrs Liu as amounting to £130 in total, being £50 paid to the postman, £50 to the cleaner, £20 to the bin man and £10 to those involved in recycling. Mrs Brown confirmed that a number of the flat owners had specifically asked that such payments should be made out of communal funds. The Applicant contended that it had been more efficient when collecting boxes had been placed in the communal area and did not agree that the payments should come out of service charges. Mr Bentham noted however that each year the Respondent received some separate income over and above that paid by the flat owners in respect of service charges, both from a 10% discount of £195 allowed annually by the Head Landlord for prompt payment of the ground rent, and from fees charged for information and documentation provided to buyers/solicitors when individual flats changed ownership.

43. The Respondent did not agree that the Applicant had been deliberately denied access to information that she was statutory entitled. Various letters and emails in the Respondent's statement of case were referred to, and it was disappointing for the Tribunal to note the Applicant's confirmation that neither she nor her solicitors had taken up the offers confirmed in writing on more than one occasion to inspect and copy documents at Homestead's offices, or to specify which they might like emailed. Mr Bentham readily agreed that he would comply with the Applicant's request for a copy of Homestead's present contract and terms of business.

44. Mr Bentham disputed the Applicant's assertion of past general mismanagement and stated that as a Fellow of ARMA, a Chartered Surveyor, and with well over 30 years experience managing flat developments, this was the best self managed development that he had ever encountered with exemplary communication and goodwill between the Management Company and the residents.

45. In his concluding comments, Mr Bentham urged the Tribunal to make an order for costs against the Applicant under rule 13 of the Procedure Rules having regard to the leading case of Willow Gardens, arguing that in all the circumstances the Applicant had been unreasonable to bring the applications and that it was disproportionate for her to have done so.

The Law

46. Section 27(a) of the 1985 Act provides that:-

"(1) An application may be made to the Tribunal for a determination whether a service charge is payable and, if it is, as to:-

(a) the person to whom it is payable
(b) the person by whom it is payable
(c) the amount which is payable
(d) the date at or by which it is payable
(e) the manner in which it is payable

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

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment."

47. Section 19 of the 1985 Act confirms that :-
"Relevant costs shall be taken into account in determining the amount of a service charge ....

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly."

The Tribunal's Reasons and Conclusions

48. The Tribunal found, when making its inspection, the Development to be clean, tidy, and generally well presented and maintained to a reasonable standard.

49. Nevertheless, it is axiomatic that that a 10 storey block of 78 flats with basement below, on a constricted and exposed site, has various inherent complexities requiring strategic management and an ongoing rolling plan of maintenance and repair to sustain its ageing structure, roof and infrastructure. The Tribunal when making its inspection had regard to the Building Condition Report and the helpful photographic Schedules appended to the same.

50. The Tribunal dealt with each of the years in question separately.

The 2011 – 2012 Service Charge Year.

51. The Applicant reaffirmed at the Hearing as set out in her Statement of Case that she was both willing to pay and agreed the figure (including ground rent) of £1000 that had been demanded. In other words did not dispute the global figure for that year.

52. Section 27A (4) (a) of the 1985 Act confirms that no application can be made to the Tribunal in respect of a matter which has been agreed or admitted by the tenant. The Tribunal concluded therefore that there was no need to, and possibly no continuing jurisdiction, to review that particular year and that the agreed figure should be confirmed.

The 2013 – 2014 Service Charge Year.

53. The Applicant confirmed that she was willing to pay £1000 but not the £1250 that had been demanded.

54. Section 27A (4) (c) of the 1985 Act confirms that no application can be made to the Tribunal in respect of a matter which has been the subject of determination by a Court. The Applicant confirmed at the Hearing that she had not sought to appeal the 2015 Tribunal Decision, which of course she was fully aware of having been the lead Applicant. The Tribunal rapidly concluded therefore that it had no jurisdiction to review that particular year, where the 2015 Tribunal Decision was clear and had confirmed that the figure of £1250 which had been demanded was both reasonable and payable.

55. The Tribunal expressed its concern to the Applicant that she had sought to include a further review of a decision which had already been made and found her stated reasons for doing so very weak.

The 2014 – 2015 Service Charge Year.

56. The service charge expenditure disputed by the Applicant related to the £500 surcharge for the asbestos remediation works and the £2000 payment to Mrs Brown.

57. Section 19 of the 1985 Act imposes a general requirement of reasonableness in relation to service charge expenditure.

58. The questions to be asked are whether a landlord's actions in incurring relevant costs and the amount of those costs are both reasonable, and whether the works are of a reasonable standard.

59. The Tribunal carefully reviewed the 2015 Consultation Dispensation Decision, and had no hesitation in agreeing with its decision and conclusions that the Respondent's desire to proceed with the works without delay was "surely a reasonable one. It is very clear that there (was) indeed an urgent need for swift remedial action to address the hazards which have been identified by the HSE… The manner in which those hazards came to light is not relevant to the question whether urgent remedial action (was) required…."

60. In other words, the Tribunal readily agreed that costs needed to be incurred without delay when the dangers became apparent.

61. The requirement that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give a landlord a licence to charge a figure that is out of line with the market norm (see for example Forcelux v. Sweetman (2001) 2 EGLR 173).

62. The Tribunal had careful regard to the AARC quote and shared Mr Bentham's view that it was an unsafe comparable to the 2 quotations obtained by the Respondent at the time. It was very difficult to know, from the paperwork provided, the exact specification given to AARC. Its quote referred to a figure of £10,500 plus VAT to make safe what was referred to as the "large room" and separate figures of £1800 plus VAT and £1000 plus VAT for what were referred to as "risers". The Tribunal could only assume that the "risers" were the individual meter rooms, of which there are 40. If that is correct, then it means that the average cost quoted for each meter room was £70 plus VAT which the Tribunal did not believe was either credible or sufficient for the necessary works to be done with due diligence.

63. The Tribunal noted that the Respondent had obtained 2 quotations at the time which provided very comparable costings and that the works had been done to the quoted price. The minutes of the Respondent's subsequent AGM confirmed that the vast majority of flat owners did not dispute the costs. The Tribunal concluded that the relevant costs had been reasonably incurred.

64. No evidence was adduced or any suggestion made by the Applicant that the asbestos remediation works were not of a reasonable standard and it was noted that all appropriate certificates had been issued and the HSE's requirements satisfied.

65. The Tribunal therefore found that the costs charged to the flat owners (and the £500 additional levy) for the asbestos remediation works were both payable and reasonable.

66. The Tribunal reviewed the £2000 annual honorarium paid to Mrs Brown for her work as Company secretary/treasurer prior to Homestead's appointment. It was noted that each payment had been endorsed by a large majority of the flat owners at the different AGMs whereby those payments were authorised. The name given to the payment did not alter the fact that it was for work and services provided to the Respondent and the owners of the flats, and thus clearly within the ambit of the costs specified clause 16 of the 6th Schedule to the Lease for which each flat owner has to pay his or her due proportion under the service charge.

67. The Tribunal thus had no difficulty in finding that the payments to Mrs Brown had been reasonably incurred. The Tribunal also found her to be a credible witness and calculated on the basis of her rough estimate of the number of hours involved, the payments made were at a rate which was less than half of the present statutory minimum wage. The Tribunal decided very quickly that the payments made for her work were both reasonable and payable as part of the service charges.

68. The Tribunal concluded that the overall service charges of £1850 (being £1350 plus special levy of £500) for the year were both reasonable and payable.

The 2015 – 2016 Service Charge Year.

69. The Applicant again disputed the £2000 payment made to Mrs Brown. For the same reasons set out in the previous paragraphs, the Tribunal concluded that the cost was reasonable and payable.

70. The Tribunal concluded that the service charge demanded for the year of £1450 was reasonable and payable.

The 2016 – 2017 Service Charge Year.

71. The Applicant again disputed the £2000 payment made to Mrs Brown. For the reasons previously referred to, the Tribunal concluded that the cost was reasonable and payable.

72. The Applicant also objected to the payment of the Christmas gratuities. Although it was noted and agreed that the payments made were more than covered by income from sources other than the service charges, the Tribunal did not agree with the contention that there was no authority to make such payments out of service charge funds. As previously confirmed, clause 16 of the 6th Schedule to the Lease provides an ability to use service charge payments to indemnify "costs or expenses… in providing services to the…. owners of the flats or in employing caretakers, gardeners or other servants…"

73. The Tribunal also noted that the total cost of the Christmas gratuities amounted to an annual cost of less than £2 for each flat owner. As such, and as expressed at the Hearing, the Tribunal was concerned that to spend any great amount of time debating the same was out of all proportion, and in conflict with overriding objective set out in the Tribunal's Procedure Rules to deal with the case fairly and justly.

74. The Tribunal concluded that the overall service charges of £1550 for the year were both reasonable and payable.

The 2017 – 2018 Service Charge Year.

75. Other than stating that she was unwilling to pay more than £1000, the Applicant did not identify costs which she alleged had been unreasonably incurred.

76. It was not easy for the Tribunal to discern the Applicant's position as regards reserves. On the one hand she argued that disrepair at the property was the result of mismanagement, but on the other that service charges should return to a figure of £1000 per annum, and that if expensive extraordinary repairs were required they should be paid for at the time that they are undertaken.

77. The Tribunal did not agree that any present disrepair to the property inevitably leads to the conclusion that it had been mismanaged. Many of the repairs that appear to now be required (particularly as to the roof and south-west facing elevation) can be explained as a natural consequence of the age of the building and its infrastructure. The Tribunal was pleased to note that the Respondent and Homestead had requisitioned and published the Building Condition Report, discussed this at a meeting open to all of the residents and confirmed that the intention was that the Consultant and Homestead "would work together to formulate a plan meet Lakeland House's needs on each of the various necessary projects"

78. As regards the need for reserves, the Tribunal has no hesitation in agreeing with the advice given in the RICS's "Service charge Residential Management Code -3rd edition" when it confirms "Reserve funds can benefit both the landlord and leaseholder alike, ensuring monies are available when required for major works, cyclical works or replacing expensive plant. It is, therefore, considered good practice to hold reserve funds where the lease permits". In this case it is clear that the Lease clearly permits and encourages the maintenance of reserves.

79. The Tribunal did not find any compelling reason to limit the costs taken into account by the Respondent in determining the service charges for 2017/18, and found that the sum demanded of £1550 both reasonable and payable

General complaints made by the Applicant

80. In a number of the years the Applicant complained about the timing of service charge demands, and that requests for information had been disregarded. The Tribunal found very little evidence to uphold such complaints.

81. The Tribunal noted when inspecting the development that information is displayed on notice boards, and was impressed that Mr Bentham felt able to state his view that the standards of communication and co-operation between the flat owners was "exemplary".

82. The Tribunal found that the Applicant had on occasions become fixated on certain technical issues relating to the accounts, and had sometimes misinterpreted them. Any explanation proffered by the management Company's directors or their agents on such matters appeared to be met by a shrug of the shoulders, and the Tribunal was left with the clear impression that the Applicant's mistrust is so deeply embedded that she will never find their explanations sufficient.

83. The Tribunal has sympathy with those who do not necessarily find formal accounts always easy to interpret and reiterates the advice given at the Hearing that the Applicant might well be assisted, in the light of her stated mistrust of the Respondent, by asking her own accountant to help with the interpretation of the Company's accounts. Sadly the impression given, both at the Hearing and from the papers, is that she would probably prefer to maintain a conspiracy theory.

84. The Tribunal found no evidence whatsoever to substantiate any inference or assertion made by the Applicant that monies which had been paid to the Company had in any way been misappropriated.

85. The Tribunal noted that the Respondent's accountants acting as statutory auditors had in respect of each of the published accounts appended a certificate to confirm that such statements "gave a true and fair view of the Company's affairs… and had been properly prepared in accordance with the generally accepted accounting practice".

86. The Tribunal found no evidence to question the different auditors' independence and no reason to question their conclusions that the accounts had been properly kept and prepared.

87. Having inspected the development, carefully considered all of the evidence before it, and using its own knowledge and experience, the Tribunal did not find any evidence that any of the expenditure within the service charges had been unreasonably incurred.

88. The Tribunal's overall conclusion (agreeing with that expressed in the 2015 Tribunal Decision) was that the service charges which had been levied were modest by comparison to what might be expected for a development of this type, and concluded that the items of expenditure made in recent years had been entirely appropriate in order to sustain and maintain a large block of 78 flats with 10 habitable floors.

89. As consequence of the foregoing and for the reasons stated the Tribunal concluded that the service charges which had been demanded by the Respondent for each of the years in question were reasonable and payable.

The Section 20(c) Application

90. The Tribunal went on to consider the Applicant's separate application, that the Tribunal make an order under section 20(c) of the 1985 Act that the Respondent be precluded from including within the service charges the costs incurred by the Respondent in connection with the present proceedings before the Tribunal.

91. The Tribunal having regard to what is just and equitable in all the circumstances, and in the light of its foregoing decision, determined that such an order should not be made.

Paragraph 13 Costs

92. As had been explained to the parties at the beginning of the Hearing Paragraph 13 of the Procedure Rules provides that a Tribunal may determine that one party to the proceedings pays the costs incurred by the other party in the limited circumstances set out in that rule, if that party has acted unreasonably in bringing defending or conducting those proceedings.

93. The Tribunal gave careful thought to whether such an order should be made against the Applicant.

94. Sadly it appears she has been involved in what is described in one letter exhibited in her own statement of case as "a campaign". The minutes of the Company's AGMs attest to her numerous resolutions being voted down often by a very large majority of the flat owners. The Tribunal was left with the impression that she has often sought to use any perceived error wilfully to her advantage, and sometimes to disseminate misinformation to match her own particular agenda. In such circumstances, it is not easy to discern what may be valid questions or complaints. But, it was legitimate for her to question the reasonableness of expenditure of £38,500 relating to the asbestos remediation works, and it is true that the carpet in her lift landing area is tired and has not been replaced as some others have been.

95. In making its decision as to costs the Tribunal has been greatly assisted by a review of the leading Upper Tribunal case of Willow Court Management Company (1985) Ltd v Alexander and others (2016) UKUT 0290(LC) ("Willow Court") whereby Martin Roger QC, Deputy Chamber President of the Upper Tribunal (Lands Chamber) and Siobhan McGrath Chamber President of the Tribunal provided detailed guidance as to how the discretionary power afforded under Paragraph 13 should be exercised.

96. The case confirms that a finding of "unreasonable conduct" is an essential precondition to the exercise of the Tribunal's discretion. It is only if and when such a finding has been made that a 2nd stage in the process is engaged and when "it is essential for the Tribunal consider whether, in the light of the unreasonable conduct it has found…. it ought to make an order for costs or not." "It is only if it decides that it should make an order that a 3rd stage is reached when the question is what the terms of that order should be"

97. The first question for the Tribunal to address therefore is has the Applicant acted unreasonably, i.e. acted without any reasonable explanation for the conduct complained of. Previous authorities such as the Court of Appeal in Ridehalgh v Horsefield (1994)Ch 205 make it clear that "unreasonable" conduct includes "conduct which is vexatious, and designed to harass the other side rather than the advance the resolution of the case….. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result."

98. Willow Court states "only behaviour related to the conduct of the proceedings themselves may be relied on at the first stage of the analysis", although qualifies that statement, before continuing "the mere fact of an unjustified dispute over liability has given rise to the proceedings cannot in itself…. be grounds for a finding of unreasonable conduct."

99. It also makes it clear that the fact that a party acts without legal advice is relevant to the necessary objective assessment of whether the threshold allowing the Tribunal to make an order has been crossed, and agreed with the observation made in Cancino v Secretary of State for the Home Department (2015) UKFTT 00059 (IAC) that "stated succinctly, every unrepresented litigate must, on the one hand be permitted appropriate latitude. On the other hand, no unrepresented litigate can be permitted to misuse the process of the Tribunal"

100. The threshold as to what is "unreasonable conduct" in this particular context is a high one, but notwithstanding that the Tribunal ultimately decided that the Applicant (who represented herself and who was polite throughout the Hearing) had not crossed it, it is important that she realizes that its decision was a very close one. The Tribunal was singularly unimpressed by the attempt to overturn the 2015 Tribunal Decision long after the time for any legitimate appeal, by the tone of some of her emails and demands, the deliberate decision not to comply with some of the Tribunal's directions in particular that specifying the parties must attempt to agree a single bundle (which resulted in 3 box binders containing over 1200 pages, many of which were duplicated), the labouring of points (such as clear typographical errors) which were totally out of proportion to the issues involved, and the submission of yet further papers even in the days after the Hearing. Any repetition in the future, after this advice, must risk a future Tribunal not showing similar latitude.

101. Nevertheless despite this, the Tribunal has decided that, in all the circumstances of this case, it would not be appropriate to make an order under paragraph 13 of the Procedure Rules.

The Application under Paragraph 5A of Schedule 11 to the 2002 Act

102. The Applicant applied for an order under Paragraph 5A of Schedule 11 to the 2002 Act to reduce or extinguish liability to pay a particular administration charge in respect of litigation costs, i.e. to limit the payment of any contractual costs allowed for under the Lease.

103. The Tribunal, having regard to what is just and equitable in all the circumstances, has determined that such an order should not be made.

Judge J M Going