FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2018/0321**
Property	**:**	**Dorset House, Gloucester Place, London, NW1 5AQ**
Applicant	**:**	**Mr Clive Norman (Flat 6) and the tenants of 23 other flats at Dorset House listed in Appendix 1**
Representative	**:**	**Mr Clive Norman (in person)**
Respondent	**:**	**Dorset House Residential Limited**
Representative	**:**	**Mr Sol Unsdorfer (Parkgate Aspen Property Management)**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal	**:**	**Judge Robert Latham** **Mr Hugh Geddes** **Mr Leslie Packer**
Date and Venue of Hearing	**:**	**21 and 22 January, and 29 April 2019 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**10 May 2019**
Date of Revised Decision:	**:**	**18 July 2019**

CORECTION CERTIFICATE

In his application for permission to appeal, dated 21 June 2019, Mr Norman has identified a number of clerical mistakes and accidental slips. None material to our decision. We have had regard to the representations made by the Respondent on 12 July. The Tribunal correct these errors pursuant to Rule 50 of the Tribunal Procedure (First-tier) (Property Chamber Rules 2013. These amendments are highlighted.

REVISED DECISION

Decisions of the Tribunal

(1) The Tribunal has been asked to determine the payability and reasonableness of some 291 items identified in a Scott Schedule. We have found that most items are payable. Our decision records where challenges have been conceded by the Applicant, concessions have been made by the Respondent and where we have disallowed some items. These are highlighted with an "*" in the tables in our decision.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985. Neither does the Tribunal make any order for the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. On 28 August 2018, the Applicant, Mr Clive Norman, issued an application seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicant. The Applicant is the lessee of Flat 6, Dorset House, Gloucester Place, NW1 5AQ which he owns jointly with his wife and son. He does not currently reside in his flat. A further 22 tenants have applied to be joined as applicants. Their names are annexed to this decision. The 23 tenants who are party to this application own 25 of the 200 flats at Dorset House. The application relates to the service charge years 2013/4, 2014/5, 2015/6, and 2016/7. The service charge year ends on 29 September.

2. The Respondent landlord is Dorset House Residential Limited ("DHLR"). There is a complex history to the ownership of the landlord and freehold interests. This is not strictly relevant to the issues that we are required to determine, but may explain the antagonism that has built up between the parties. There is a group of linked companies owned by Equiom Trust Company Ltd, which is based in the Isle of Man. In 1978, Bellnorth Ltd ("Bellnorth") acquired the landlord interest. In 2003, Orro Ltd, also a member of the group, acquired the freehold interest. On 25 December 2010, Bellnorth transferred its landlord interest to Winllan (Environmental) Limited, another associated company, for the sum of £25,000, who on the same day transferred it to the Respondent. A number of tenants (including Mr Norman) unsuccessfully sought to challenge this transfer in proceedings brought under section 423 of the Insolvency Act 2017.

3. There have been six previous applications and five determinations relating to Dorset House, two of which were heard together: (i) LON/00BK/LSC/2004/0094

(12 April 2005); (ii) LON/00BK/LSC/2009/346 (14 July 2010); (iii) LON/00BK/LSC/2011/0620 and LAM/00BK/2011/0019 (16 July 2012); (iv) LON/00BK/LSC/2016/0135 (5 January 2017); and (v) LON/00BK/LAM/2017/0020 (25 September 2017).

4. On 18 September, the Tribunal gave Directions. The Respondent challenged the Tribunal's jurisdiction to decide whether the Cleaning and Boiler contracts are Qualifying Long Term Agreements ("QLTAs"), as contended by the Applicants, on the ground that this had been determined in LON/00BK/LSC/2016/0135 by a Tribunal on 5 January 2017. The parties agreed that this should be determined as a preliminary issue. On 26 October, this Tribunal determined this issue in favour of the Respondent. The Tribunal was satisfied that the Applicant is estopped from revisiting whether the Cleaning and Boiler contracts are QLTAs by the principle of issue estoppel.

5. Pursuant to the Directions, the parties have prepared a detailed Scott Schedule. Neither party has filed any witness statements. The Applicants have filed a Bundle of Documents which extends to 938 pages. This includes a large number of invoices. On 14 January, the Respondent filed a number of additional documents.

The Hearing

6. The hearing was listed for two days on 21 and 22 January 2019. Mr Norman appeared in person to represent the Applicants. He is a retired engineer. He was a project director. He has filed a brief witness statement. He was accompanied by his wife. He confirmed that he had authority to act on behalf of the 23 tenants who are now parties to this application. None of them attended. None of them have provided witness statements.

7. Mr Sol Unsdorfer, from the managing agents, Parkgate Aspen Property Management ("Parkgate") represented the Respondent. He was assisted by Mr Nilesh Shah, Parkgate's Finance Director, and Mr T Burr, a Parkgate Director.

8. At the beginning of the hearing on 21 January, we asked each party to make a brief statement, before working through the items challenged in the Scott Schedule. Mr Unsdorfer stated that there were a number of common flaws to the Applicants' case:

(i) There was a misunderstanding of basic accountancy principles relating to the treatment of accruals.

(ii) There was a misunderstanding of the scope of the insurance that the landlord had arranged for the building. There was an excess of £500 for any claim.

(iii) The tenants had failed to correlate the landlord's repairing obligations with the tenants' service charge obligations.

(iv) There was a misunderstanding of the scope of the various service contracts and the circumstances in which the contractor was entitled to levy an additional charge.

(v) Mr Norman had made up labour rates to suit his arguments.

(vi) The tenants analysed the expenditure with the benefit of 20:20 hindsight. Management needs to respond to the heat of the moment. The landlord should not be criticised for decisions which seemed correct at the time.

9. Mr Norman's Scott Schedule extends to 31 pages and raises 291 items under 18 heads of expenditure. He has not sought to identify the items which raise general points of principle. At the beginning of the hearing, we reminded Mr Norman that it is not the role of this Tribunal to micro-manage the manner in which a landlord maintains its service charge accounts. A landlord is entitled to a significant margin of discretion as to how it manages a block of flats. Our role is to determine whether the service charge items are payable pursuant to the terms of the lease and whether the sums charged are reasonable. The Applicants have not adduced any independent expert or professional evidence.

10. Throughout the hearing, we urged Mr Norman to focus on the significant items in dispute. He has analysed all the invoices over a period of four years, seeking to identify any which he thought were open to challenge. In a number of cases where the landlord has provided a full explanation, Mr Norman has merely sought to identify new grounds of challenge. This approach is not acceptable.

11. Mr Norman's position was that each item of challenge raised an important point of principle and deserved equal attention regardless of whether his liability was £1 (in one case just 21p) or £1,000. He seemed to have no understanding of the principle of "proportionality" which is a fundamental principle to the overriding objectives in the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("The Tribunal Rules") to which both the tribunal and the parties must have regard if cases are to be determined fairly and justly.

12. During the hearing, there was some helpful give and take on both sides. Mr Unsdorfer conceded some points and sums of money in the light of Mr Norman's arguments. Mr Norman conceded or withdrew some of his points in the light of Mr Unsdorfer's explanations. On 22 January, the hearing was cut short at 14.00 due to the ill health of the Applicant. The Tribunal regrets that we were unable to reconvene until 29 April.

13. On 25 January 2019, the Tribunal issued further Directions. We indicated that we were satisfied that we could conclude the hearing on the papers, having regard to the detailed submissions made in the Scott Schedule. Both parties have agreed to this course. We recorded a number of concessions which we had noted at the hearing and asked the parties to confirm these. We asked the Respondent to clarify three issues relating to the heating and hot water boiler. Mr Norman made some further written submissions. On 4 March, the Tribunal

confirmed that we would only have regard to these in so far as they sought to clarify the submissions which had already been made. The Tribunal would not have regard to any new matters to which the Respondent had not had an opportunity to respond.

14. On 29 April, The Tribunal reconvened to determine the outstanding issues. We were concerned by one issue of some importance which had not been highlighted by either party. The Tribunal has been provided with a number of copies of the management agreement between Parkgate and the landlord, all of which are in a similar form. Section 4 specifies the additional duties for which Parkgate can levy an additional charge (see p.775). Clause 4.1(a) refers to the "administration and supervision of major works". However, Clause 4.2 provides that the "fees for duties referred to in clause 4.1(a) shall be as are agreed in writing between the client and the Agent (each to act reasonably provided that the fees in any event shall not exceed 2.5 per cent of the relevant net contract sum)". Parkgate have rather charged 10% an administration and supervision fee of 10% on a number of items of work. On 7 May, the Tribunal alerted the Respondent to this issue. By return, Mr Unsdorfer conceded that there was an error and that an adjustment should be made. We had alerted the Respondent to one service charge item. However, it is apparent that this also extends to a second item. The Tribunal did not invite Mr Norman to comment on this as we did not wish to afford him the opportunity to raise yet further arguments. Despite this, Mr Norman wrote to the Tribunal on 8 May. We have not had regard to any new matters which he could, and should, have raised in the Scott Schedule.

Issues to be Determined

15. Mr Norman challenges 291 items under the following heads:

(i) Issue 1: Porterage.
(ii) Issue 2: Cleaning.
(iii) Issue 3: Repairs and Maintenance.
(iv) Issue 4: Lift Repair & Maintenance.
(v) Issue 5: Heating and Hot Water Boiler Maintenance: heating and hot water.
(vi) Issue 6: Pest Control.
(vii) Issue 7: Floral Display and Planted Areas.
(viii) Issue 8: Communal Television and radio aerial system.
(ix) Issue 9: Health & Safety Sundries.
(x) Issue 10: Telephone and Pagers.
(xi) Issue 11: Refuse Removal.
(xii) Issue 12: Insurance.
(xiii) Issue 13: Audit Fees.
(xiv) Issue 14: Professional Fees.
(xv) Issue 15: Petty Cash.
(xvi) Issue 16: Management Fees.
(xvii) Issue 17: Bank Charges (net of interest received).
(xviii) Issue 18: Major Works Expenditure.

The Lease

16. The lease for Flat 6, dated 3 November 1976, is at A35. We were told that the leases of the other flats are in similar terms.

17. The demise is specified in Part 1 of the First Schedule. It includes (i) "the plastered coverings, plaster work of the ceilings and the surfaces of the floors including the whole of the floor board supporting joists; and (ii) all conduits which are laid on or any part of the Building (namely Dorset House) which serve exclusively the flat". The demise excludes (i) "any parts of the Building (other than any conduits expressly included in this demise) lying above the surfaces of the ceiling or below the floor surfaces; and (ii) any conduits in the building which do not serve the Flat exclusively".

18. By Clause 2, the tenant covenants to contribute to the cost of specified services. Clause 2(2)(b) provides that the amount of such contribution shall be ascertained and certified by the lessor's managing agents once a year in respect of the year to 29 September, preceding the date of the certificate as soon as reasonably practicable after 29 September in any year. The specified services include:

> (i) The cost of employing and maintaining the service of a Maintenance Porterage (sub-paragraph 2(a)(vi)); and
>
> (ii) the cost of keeping any communal garden in and about the Building in good order and condition (sub-paragraph 2(a)(vii)).

19. By Clause 5, the landlord covenants:

> (i) to maintain, repair, redecorate and renew the structure of the Building (sub-paragraph 2(a)).
>
> (ii) to maintain, repair and renew the gas and water pipes, drains and electrical cables and wires in Dorset House which are enjoyed or used in common with the owners and the lessees of the other flats (sub-paragraph 2(b))
>
> (iii) to supply constant hot water by means of any boiler or heating installations serving the building (sub-paragraph 5);
>
> (iv) to provide and use its best endeavours to maintain the services of a Maintenance Staff to clean the entrance halls, stairs and passages (sub paragraph 7(a)).

20. Clause 2(2)(xii) of the lease permits the landlord to establish a reserve fund. There is no provision in the lease permitting the lessor to recover legal costs. This was determined by the Tribunal in 2009/346.

The Background

21. Dorset House was built in the 1930s. There were 196 flats spread over nine floors. Four additional flats have subsequently been added. Within the building, there are eight passenger lifts. There are eight staircases, four of which are service stairs. Dorset House is an Art Deco Building designed by T P Bennett. On 23 March 1998, it was awarded a Grade 2 listing. It is constructed with brown brick in Flemish bond with stone dressings, wrought iron balustrades and brick and stone balcony fronts. It is a steel-framed structure with concrete floors and Moderne style facades. There are purpose-designed Crittall horizontal bar metal windows throughout and many full-length French windows.

22. A particular feature is the canopy leading to the entrance of Dorset House from Gloucester Place. This was originally constructed with moulded and curved corners. Stone panels on either side are carved reliefs by Eric Gill. In the 1970s, the original canopy was removed and replaced with a modern construction which concealed the top of the Gill reliefs. The landlord has now restored the relief panels and repaired and refurbished the front forecourt, stonework and planters. It was recently formally opened by the Mayor of Westminster.

23. The flats were initially occupied under short underleases. In the 1970s, Buckingham Properties Limited, the then landlord, started to grant long leases. The lease for Flat 6 is dated 3 November 1976. In about 1978, Bellnorth acquired the head landlord interest from Buckingham Properties Limited.

24. Its interest did not include the underground garage or the ground floor commercial units. Judge Andrew found that it derived its interest from a lease dated 23 June 1975, granting a term of 125 years from 24 June 1975 at a ground rent of £1. On 11 December 2003, Orro Ltd acquired the freehold from Benesco Charity Ltd. All are linked companies based in the Isle of Man.

25. In 2000, Parkgate took over the management of the block. Mr Unsdorfer described how the block had been neglected for some 20 years. No external repairs had been executed and these were immediately put in hand. The block required to be rewired. There was asbestos. The managing agents proceeded to draw up a programme of repairs in consultation with the Dorset House Tenants Association ("DHTA").

26. In 2002, Mr Norman acquired the leasehold interest in Flat 6 which he owns jointly with his wife and son. This is a two bedroom flat on the second floor. They initially held a lease for a term of 125 years (less ten days) from 24 June 1975. On 14 September 2016, they secured a statutory extension of 90 years. Mr Norman does not currently occupy his flat. He describes himself as an "advisor" to the DHTA.

27. There are now 200 flats at Dorset House. As a result of the four flats which have been added, the service charge contributions now exceed 100%, so the landlord

operates a rebate scheme. The service charge contribution in the Mr Norman's lease is specified as 0.7214%. As a result of the rebate, he pays a contribution of 0.69734% (which we round to 0.7% in this determination). The service charge contributions had been computed on the basis of rateable values. There are some commercial premises on the ground floor and an underground garage. These are separately owned and managed.

28. The landlord had owned a number of flats. This is no longer the position. Mr Unsdorfer stated that there are substantial arrears of service charges, currently some £900,000. The 23 tenants who own 25 flats and who are parties to this application owe a total of £250,000. The leases do not permit the landlord to collect advance service charges. There is a reserve fund and an external repairs programme is planned at a cost of some £2.5m. There are arrears of £1m on contributions to the reserve fund.

Issue 1: Porterage

29. In the service charge accounts, the sums claimed for porterage have been: 2014: £235,812; 2015: £248,414; 2016: £241,546; 2017: £236,460. Mr Norman's 0.7% share has ranged from £1,650 to £1,750 pa.

30. Mr Norman raises two issues:

(i) The payment to QuickPaye for payroll services. In 2015, the charge was £1,097.30 of which Mr Norman's share was £7.68. Mr Norman contends that the payroll services should fall within Parkgate's management responsibilities.

(ii) The payment to Penninsula in respect of insurance for employment disputes. In 2015, the charge was £1,377.76 of which Mr Norman's share was £9.64. Mr Norman contends that the landlord is not entitled to pass this on through the service charge.

31. The Tribunal disagrees:

(i) The tenant covenants to contribute to the cost of the porterage service. Clause 3.2(i) of the Management Agreement (at p.772) only imposes an obligation on Parkgate in respect of the "procurement of payroll handling". It does not require the managing agents to provide the payroll service in house.

(ii) The Tribunal is satisfied that insurance against employment claims is a reasonable expense incidental to the employment of the porters. Mr Unsdorfer explained that under the policy, the insurer will accept responsibility for any legal costs and compensation if the employer acts upon their advice. He provided the Tribunal with a copy of the insurance policy. The Tribunal is satisfied that the cost of the insurance is reasonable. Parkgate have a block policy covering all the staff for which they responsible within their portfolio. This totals some 160 staff, only 8 or 9 of whom are employed at Dorset House.

Porterage - Items Raised in Scott Schedule		
1.1	**Wages (2015)**	
1.1.1	A objects to items for Quick Paye and Penninsula. Decision: sums are payable.	
1.1.2	A object to items for Quick Paye. Decision: sum is payable.	
1.2	**Wages (2017)**	
1.2.1	R accepts that credit of £300 should be applied to the 2018 accounts.	*
1.2.2	A objects to items for Quick Paye. Decision: sum is payable.	
1.3	No longer challenged	
1.4	No longer challenged	
1.5	No longer challenged	
1.6	No longer challenged	
1.7	No longer challenged	
1.8	**Wages (2014)**	
1.8.1	A objects to items for Quick Paye and Penninsula. Decision: sums are payable.	
1.8.2	A objects to items for Quick Paye. Decision: sum is payable.	
1.9	**Wages (2019)**	
1.9.1	A objects to items for Quick Paye. Decision: sum is payable.	

Issue 2: Cleaning

32. In the service charge accounts, the sums claimed for cleaning have been: 2014: £47,023; 2015: £48,260; 2016: £51,926; 2017: £55,955. Mr Norman's 0.7% share has ranged from £330 to £390 pa.

33. Mr Unsdorfer has produced the Service Specification. Mr Norman complains that the contractors, O&G, have not carried out cleaning of the service stairways, service lifts or the refuse bin areas. He argues that a reduction of 25% should be made because of the poor quality of the service.

34. Mr Norman faces an insuperable problem in that he has adduced no evidence relating to the poor quality of the service. Neither he, nor any of the other tenants for whom he acts, has filed a witness statement in respect of the poor quality of the service. His bundle, which extends to 938 pages, does include any letters or e-mails of complaint. Mr Norman stated that he was able to produce a number of such e-mails. However, these should have been included in the bundle. Any party is entitled to know the substance of the case that they must answer. It was now too late for such further evidence to be adduced.

35. In any event, Mr Norman's criticisms seemed to relate to the service stairways, service lifts and the refuse bin areas. These are not areas which the tenants and their visitors would normally use. Mr Unsdorfer accepted that the refuse area would by its nature be messy. However, he denied that complaints had been made and rather suggested that positive comments had been made about the performance of the contractors. The Tribunal finds that the sums are payable and are reasonable. Mr Norman has not adduced any evidence sufficient to satisfy us that any reduction should be made.

Issue 3: Repairs and Maintenance

36. In the service charge accounts, the sums claimed for repairs and maintenance have been: 2014: £87,971; 2015: £63,061; 2016: £71,810; 2017: £113,494. Mr Norman's 0.7% share has ranged from £440 to £800 pa.

37. Mr Norman accepted that the repairs had been carried out. His argument was rather that a number of items should not have been charged to the service charge account. 120 invoices are challenged. He raised a number of arguments: (i) Some work was required to make good defective workmanship. The original contractor should have been required to return to make good their defective work at no cost to the landlord. (ii) Other items should have been funded through insurance claims. (iii) Further items related to disrepair within individual flats. These should have been charged to the individual tenant. (iv) some items should have been covered by a service contract without the need for any additional expense. The Tribunal discusses some items in detail to address the generic issues. We then apply these findings to the other items which are challenged.

38. It is necessary for the Tribunal to determine the respective rights and obligations of landlord and tenant in respect of the communal pipework. This relates to the cold and hot water pipes which serve the flats. There is a communal heating system. Mr Norman sought to argue that any disrepair to a pipe within a tenant's demise was the responsibility of that tenant. He suggested that any pipework between the floor of one flat and the ceiling of another flat would fall within the demise of one or other of the flats. The Tribunal canvassed the logical consequence of this argument: a pipe might serve the upper flat whilst running within the demise of the lower flat. Why should the lower flat tenant be responsible for the repair and maintenance of a pipe serving the upper flat?

39. The Tribunal is satisfied that the landlord is responsible for maintaining, repairing and renewing any communal pipework supplying cold or hot water to Dorset House (see Clause 5(2)(b)). These are expressly excluded from the demise of any flat (see Part 1 of the First Schedule). This would include any radiator within a flat as hot water feeds in and out of any such radiator as part of the communal system. We understand that the heating operates on the basis of a continuous circulation system. The tenant's liability would only arise when water is taken from the communal water supply to feed the tenant's facilities, such as a basin, bath or washing machine. The landlord is also required to maintain and repair the communal waste pipes.

40. Mr Norman challenges (Item 3.1.2) an invoice dated 31 March 2014 submitted by Wears Bros (at p.206) in the sum of £1,100.67. The contractor charged for a number of visits to identify a plumbing defect which was causing noise which was thought to be coming from the pipework in the duct. The plumber had to inspect a number of flats and the problem was eventually traced to Flat 73 where a torbeck valve in the toilet was found to be making a slight vibrating noise. Mr Norman argues that this was due to defective workmanship and that the

original contractor should have been called back to make good the defect. Alternatively, the repair should rather have been charged to the tenant of Flat 73. We do not accept this argument. There was a noise problem relating to the communal water supply. It was the landlord's responsibility to maintain and repair this. The landlord therefore needed to identify the cause of the problem. That cause was eventually traced to a torbeck valve in the toilet in Flat 73. Even if the repair of that valve was strictly the responsibility of the tenant of Flat 73, the cost of replacing that valve would have been modest. It would not have been proportionate for the landlord to separate the cost of that minor repair from the investigative work that it was obliged to carry out.

41. Mr Norman challenges (Item 3.1.13) an invoice dated 31 July 2014 submitted by Groom Property Maintenance ("Groom") in the sum of £991.80 (at p.218). The contractor was requested to investigate and clear the waste stack passing through Flats 19 and 25 which served the flats above. The work, carried out on 28 March 2014, involved Flats 19, 25 and 27 and included removing burn plates and jetting the system. Mr Norman contends that there should have been no additional charge as this should have been carried out under Groom's quarterly drainage clearance. This work had been carried out on 14 February 2014 and Groom had charged £998.40 for this (see p.219). The Tribunal does not accept this argument. The quarterly drainage clearance does not preclude the need for additional work in respect of particular blockages which will inevitably arise from time to time.

42. Mr Norman challenges (Item 3.1.1 – Part 2) an invoice dated 31 May 2013 submitted by DMG Delta ("DMG") in the sum of £742.56 (at p.220). On 25 March 2013, two operatives had attended on an emergency call out to unblock a high-level suspended stack serving a flat which was causing flooding in a room next to the car park. Mr Norman argues that this should have been included in the 2013 accounts. The Tribunal accepts that it was not included in these accounts and that it was open to the landlord to carry this over to 2014. Secondly, Mr Norman argues that the charge out rate would have been lower had the landlord used other contractors, whether Groom or GTM Maintenance, and that a deduction of £243 should be made. We accept Mr Unsdorfer's argument that a landlord must have a margin of discretion to call out whatever contractor is available in an emergency.

43. Mr Norman challenges (Item 3.1.6 – Part 2) an invoice dated 15 December 2012 submitted by Goldmajor Builders ("Goldmajor") in the sum of £540 (at p.242). The contractor made good damage to decorations at Flat 110 which was necessary as a result of water ingress. Mr Norman again argues that this should have been included in the 2013 accounts. The Tribunal accepts that it was open to the landlord to carry this over to 2014. Secondly, Mr Norman argues that this should have been an insurance claim. We accept Mr Unsdorfer's argument that this was not an insurable claim. This was caused by an external defect. It is a condition of the policy that that the exterior of the building should be kept wind and weather tight.

44. Mr Norman challenges (Item 3.1.9 – Part 2) an invoice dated 1 March 2014 submitted by Adiuvo in the sum of £26.10 (at p.245). The contractor provides an emergency out of hours call handling service. This is a quarterly charge. Mr Norman contends that this service is not required as the duty porters can handle all emergencies. We are satisfied that this is a service, at a very modest cost, which it is reasonable for the landlord to maintain. Adiuvo deal with out of hours emergencies which are reported to them by telephone and which they relay to the porters and/or the management staff.

45. Mr Norman challenges (Item 3.1.10 - Part 2) an invoice dated 1 March 2014 submitted by Goldmajor in the sum of £3,240 (at p.245). This was for repairs to the lobby ceiling caused by a water leak. Mr Norman contends that the leak relates to defective workmanship when the pipework was replaced some years earlier. The work should have been carried out by the original contractor at no cost, or it should have been an insurance claim. Mr Unsdorfer stated that the damage was caused over many years and cannot be attributed to any particular incident or the major pipework renewal. We also accept that a landlord has a discretion as to whether or not it is feasible or appropriate to make an insurance claim. The landlord prides itself on having a good claims record, which helps keep down premiums, to leaseholders' benefit.

46. Mr Norman challenges (Item 3.1.12 – Part 2) an invoice dated 1 September 2014 submitted by Balcan in the sum of £940.80 (at p.251). The contractor attended as an emergency to make safe a ceiling that had collapsed and reinstated the ceiling. On 7 February, BVP, chartered building surveyors, had inspected the flat to investigate the cause of the dampness to Flat 83. The surveyor had inspected the balcony in Flat 93. He recommended the complete reinstatement of the balcony which required the removal of decking which had been put down by the tenant. Mr Norman contends that the damage would not have occurred had repairs been executed more expeditiously. The cost of the works should therefore be borne by the managing agents. Alternatively, this should have been an insurance claim. The Tribunal accepts that the repairs could not be executed until the decking had been removed. Further, this was not an insurance claim as it was a maintenance issue. This was clearly marked on the invoice. We accept the landlord's argument and find that this sum is payable.

47. Mr Norman challenges (Item 3.2.7) an invoice dated 10 March 2015 submitted by Wears Bros in the sum of £437.36 (at p.267). The works related to a blockage in a soil pipe. Mr Norman contends that this should have been charged to the individual tenant. Mr Unsdorfer stated that the blockage was in a duct adjacent to Flat 22 and was a repair to the communal services. This is not something that could be charged to Flat 22. The Tribunal accepts the landlord's argument. Mr Norman has not proved that the blockage was due to the un-tenantlike behaviour of any individual tenant.

Repairs and Maintenance - Items Raised in Scott Schedule		
3.1	**(2014) Part 1**	
3.1.1	No longer challenged	
3.1.2	Decision: sum is payable – see [40] above.	

3.1.3	R concedes that this was an insurance claim	*
3.1.4	No longer challenged	
3.1.5	No longer challenged	
3.1.6	R concedes that this was an insurance claim	*
3.1.7	R concedes that this was an insurance claim	*
3.1.8	R concedes that this was an insurance claim	*
3.1.9	No longer challenged	
3.1.10	No longer challenged	
3.1.11	No longer challenged	
3.1.12	No longer challenged	
3.1.13	Decision: sum is payable – see [41] above.	
3.1.14	Decision: sum is payable. The suggestion that the work could have been done more cheaply is pure speculation.	
3.1	**(2014) Part 2**	
3.1.1	Decision: sum is payable – see [42] above.	
3.1.2	No longer challenged	
3.1.3	No longer challenged	
3.1.4	This is only a matter of accountancy	
3.1.5	This is only a matter of accountancy	
3.1.6	Decision: sum is payable. This was not an insurance claim.	
3.1.7	No longer challenged	
3.1.8	No longer challenged	
3.1.9	Decision: sum is payable. The Adiuvo contract is reasonable - see [44] above.	
3.1.10	Decision: sum is payable. The Adiuvo contract is reasonable - see [45] above.	
3.1.11	No longer challenged	
3.1.12	Decision: sum is payable – see [46] above.	
3.1.13	Decision: sum is payable. This was not an insurance claim.	
3.1.14	Decision: sum is payable. A has not established that the sum charged by dmg (at p.256) was unreasonable.	
3.2	**(2015)**	
3.2.1	Decision: sum is payable. The two contracts were for different services.	
3.2.2	Decision: sum is payable. The two contracts were for different services.	
3.2.3	Decision: sum is payable. The two contracts were for different services.	
3.2.4	Decision: sum is payable. The two contracts were for different services.	
3.2.5	No longer live	
3.2.6	Decision: sum is payable. This was not an insurance claim.	
3.2.7	Decision: sum is payable – see [47] above.	
3.2.8	No longer live	
3.2.9	No longer challenged	
3.2.10	Decision: sum is payable. A has not shown that the sum of £798.92 invoiced by dmg (at p.271) was excessive.	
3.2.11	Decision: sum is payable. A has not shown that the sum of £384 invoiced by dmg (at p.272-3) was excessive.	

3.2.12	Decision: sum is payable. The adjacent soil stack was blocked and this was a communal repair.	
3.2.13	Decision: sum is payable. This was not an insurance claim.	
3.2.14	Decision: sum is payable. This was not an insurance claim.	
3.2.15	Decision: sum is payable. This was a roof leak. It was not an insurance claim.	
3.2.16	Decision: sum is payable. This is not a sum that should have been charged to the commercial account.	
3.2.17	Decision: sum is payable. This was below the policy excess and not an insurance claim.	
3.2.18	Decision: sum is payable. This was not an insurance claim.	
3.2.19	Decision: sum is payable. This was not an insurance claim.	
3.2.20	Decision: sum is payable. This was not an insurance claim.	
3.2.21	Decision: sum is payable. It is irrelevant who terms of the valves. A has not established that the sum charged by dmg was unreasonable.	
3.3	**(2016)**	
3.3.1	Decision: sum is payable. The two contracts were for different services.	
3.3.2	Decision: sum is payable. The adjacent soil stack was blocked and this was a communal repair.	
3.3.3	Decision: sum is payable. The work was not covered by a service agreement.	
3.3.4	Decision: sum is payable for reasons stated by R.	
3.3.5	Decision: sum is payable. A has not established that the sum charged by dmg was unreasonable.	
3.3.6	No longer challenged	
3.3.7	Decision: sum is payable. The two contracts were for different services.	
3.3.8	R agrees credit of £235.20	*
3.3.9	Decision: sum is payable. This was not an insurance claim.	
3.3.10	Decision: sum is payable. Landlord needed to investigate the cause of the leak. A has not established that the sum charged by dmg was unreasonable.	
3.3.11	Decision: sum is payable. Landlord needed to investigate the cause of the leak. A has not established that the sum charged by dmg was unreasonable or that it should have been charged either to Flat 6 or to the pipework contractor.	
3.3.12	Decision: sum is payable. This was the usual summer drain down of the heating system.	
3.3.13	Decision: sum is payable. Landlord needed to investigate the cause of the leak caused by a defect to the communal pipework. A has not established that the sum of £1,169.99 charged by DMG (at p.232-4) was unreasonable.	
3.3.14	Decision: sum is payable. This was not an insurance claim.	
3.3.15	Decision: sum is payable. This was a proper service charge expense.	
3.3.16	Decision: sum is payable. This was not an insurance claim.	
3.3.17	Decision: sum is payable. This was not an insurance claim.	

3.3.18	Decision: sum is payable. R has not responded to this item. A has not established that this was an insurance claim or should have been charged to Flay 130.	
3.3.19	Decision: sum is payable. This was a proper service charge expense.	
3.3.20	Decision: sum is payable. This was not an insurance claim.	
3.3.21	Decision: sum is payable for the grounds specified by R.	
3.3.22	Decision: sum is payable. Defects to the soil and vent pipe is a communal repair.	
3.3.23	R agrees credit of £453.50	*
3.3.24	Decision: sum is payable. This was not an insurance claim.	
3.4	**(2017)**	
3.4.1	Decision: sum is payable. Defects to the soil and vent pipe is a communal repair.	
3.4.2	Decision: sum is payable. Only 40% of the overall cost was charged to the service charge account.	
3.4.3	Decision: sum is payable for the reason stated by R.	
3.4.4	Decision: sum is payable. This was a defect to a communal pipe.	
3.4.5	Decision: sum is payable. The Adiuvo contract is reasonable (see [44] above.	
3.4.6	R has not justified this item and we therefore disallow it.	*
3.4.7	Decision: sum is payable. This was not an insurance claim.	
3.4.8	Decision: sum is payable. Defect was not related to a single flat, but was a communal expense.	
3.4.9	Decision: sum is payable. This was not an insurance claim.	
3.4.10	No longer challenged	
3.4.11	Decision: sum is payable. R has not responded, but A has not established that this was an appropriate insurance claim and no claim has been made.	
3.4.12	Decision: sum is payable. This was not an insurance claim.	
3.4.13	Decision: sum is payable. The invoice for £450 is at p.360. The invoice has been paid. We are not satisfied that it should be disallowed on the ground that it was wrongly computed. We note that the invoice refers to two units at £95 each.	
3.4.14	Decision: sum is payable. This was not an insurance claim and was a communal repair.	
3.4.15	Decision: sum is payable. This charge for a call-out was properly charged to the service charge account.	
3.4.16	Decision: sum is payable. This charge for a call-out was properly charged to the service charge account.	
3.4.17	Decision: sum is payable for the reason stated by R.	
3.4.18	This is only a matter of accountancy	
3.4.19	Decision: sum is payable. This was not an insurance claim.	
3.4.20	Decision: sum is payable. The invoice is at p.369. The work was not covered by a service agreement. Only 40% of the cost was apportioned to the service charge account.	
3.4.21	Decision: sum is payable. The invoice is at p.370. This only related to the residential accommodation.	

3.4.22	Decision: sum is payable. The invoice is at p.372. This only related to the residential accommodation.	
3.4.23	Decision: sum is payable. This was not part of the boiler servicing specification.	
3.4.24	Decision: sum is payable. R needed to take action to abate the mice infestation.	
3.4.25	Decision: sum is payable. A has not established that the sum charged was unreasonably high.	

Issue 4: Lift Repair & Maintenance

48. In the service charge accounts, the sums claimed for lift repair and maintenance have been: 2014: £29,021; 2015: £23,666; 2016: £35,354; 2017: £36,121. Mr Norman's 0.7% share has ranged from £165 to £250 pa.

49. Only one issue remains in dispute. Mr Norman challenges three invoices from Griffin Elevators Ltd, dated (i) 30 June 2015 for £507 (at p.385); (ii) 7 July 2015 for £78 (at p.386); and (iii) 14 July 2015 for £534 (at p.387). All these relate to water leaks and Nr Norman contends that they should be insurance claims. Mr Unsdorfer responds that there was a £500 excess at this time. The Tribunal accepts that a landlord has a discretion as to the level of excess to be included in an insurance policy and whether to make a claim. These would have been separate claims and the net sums that could be recovered would not justify claims. We find that the sums are payable.

Lift Repair & Maintenance - Items Raised in Scott Schedule		
4.1	**Lift Expenses (2014)**	
4.1.1	No longer challenged	
4.1.2	R concedes. Credit of £540.	*
4.1.3	R concedes. Credit of £1,620.	*
4.2	**Lift Expenses (2015)**	
4.2.1	No longer challenged.	
4.2.2	No longer challenged.	
4.2.3	Decision: sum is payable – see [49] above	
4.3	**Lift Expenses (2016)**	
4.3.1	R concedes error. £1,072 to be credited to 2018 accounts.	*
4.3.2	No longer challenged	
4.4	**Lift Expenses (2017)**	
4.4.1	No longer challenged	

Issue 5: Boiler Maintenance: heating and hot water

50. In the service charge accounts, the sums claimed for this service have been: 2014: £153,733; 2015: £200,591; 2016: £201,758; 2017: £191,658. Mr Norman's 0.7% share has ranged from £1,075 to £1,400 pa.

51. There are three boilers serving Dorset House. There is a maintenance agreement with DMG Delta ("DMG") dated February 2014 (at p.898-928) which the tribunal has previously found is not a QLTA.

52. Mr Norman raised three particular issues. Firstly, he suggested that one of the boilers had been out of action for three to four years. The maintenance contract should be reduced to reflect this. This suggestion was based on an invoice at p.408. Mr Unsdorfer has raised this with DMG who have stated that this was an error and should have referred to three to four months. We accept this. It is most unlikely that the two remaining boilers would have been able to provide heating and hot water for some 200 flats over such a prolonged period.

53. Secondly, Mr Norman suggested that some of the charges should have been covered by the service agreement. This particularly relates to the annual charges for turning on and off the central heating. Mr Unsdorfer agrees that some charges should not have been made and that a credit should be made.

54. Thirdly, Mr Norman suggested that some of the charges should have been has passed on to individual lessees. We are satisfied that he heating and hot water system operates as a continuous circulation system which the landlord is obliged to maintain albeit that the defect may arise within a flat.

55. The Applicants have not adduced any independent expert or professional evidence to challenge the evidence adduced by the landlord.

Boiler & Maintenance - Items Raised in Scott Schedule		
5.1	**Repairs & Maintenance (2014)**	
5.1.1	R concedes	*
5.1.2	No longer challenged	
5.1.3	A contends that this is covered by the service agreement. We disagree. The invoice for £296.70 is at p.408. The visit was required to evaluate what work was required. Sum payable.	
5.1.4	No longer challenged	
5.1.5	A contends that this is covered by the service agreement. We disagree. The invoice is at p.412. We agree with R's comments.	
5.1.6	A contends that the invoice at p.415 is for the same work as the invoice at p.408 and should be included as part of the maintenance contract. We disagree for the reasons advanced by R.	
5.1.7	A contends that the invoice at p.417 duplicates the work invoiced at p.408. We disagree for the reasons stated by R.	
5.1.8	A contends that the invoice at p.418 is not payable because this reflects lack of maintenance. We disagree for the reasons stated by R.	
5.1.9	A contends that the invoice at p.420 is not payable because this part of the maintenance contract. We disagree for the reasons stated by R.	
5.1.10	The invoice is at p.422. We accept that it was not part of the maintenance contract. It is payable.	
5.1.11	We accept that it is payable for the reasons stated by R.	
5.1.12	No longer challenged	
5.1.13	We are satisfied that this was a proper service charge item as stated by R	

5.1.14	We are satisfied that this was a proper service charge item as stated by R	
5.1.15	The invoice is at p.428. We are satisfied that this was a proper service charge item as stated by R	
5.1.16	The invoice is at p.430. We are satisfied that this was a proper service charge item as stated by R	
5.1.17	The invoice is at p.430. We are satisfied that it is not covered by the maintenance contract as this call-out was in addition to the annual turn on/turn off.	
5.1.18	The invoice is at p.433. We are satisfied that it is not covered by the maintenance contract as stated by R	
5.1.19	The invoice is at p.434. We are satisfied that it is not covered by the maintenance contract as stated by R	
5.1.20	The landlord is obliged to supply water. The Artesian well is an important resource which the landlord is entitled to safeguard for the future. The charge payable to the Environment Agency is modest, incidental to the obligation to secure the supply of water, and reasonable.	
5.1.21	No longer challenged	
5.2	**Fuel for Boiler (2015)**	
5.2.1	No longer challenged	
5.3	**Repairs & Maintenance (2015)**	
5.3.1	R concedes	*
5.3.2	No longer challenged	
5.3.3	A contends that this is covered by the service agreement. We disagree. The invoice for £946.50 is at p.451. This was a repair to the interlock between the boiler plant and the extract fan.	
5.3.4	A contends that the invoice at p.452 should be charged to Flats 131 and 51. We disagree. This is part of the communal system.	
5.3.5	A contends that the invoice at p.453 should be charged to Flats 62. We disagree. This is part of the communal system.	
5.3.6	A contends that the invoice at p.455 should be charged to Flats 62. We disagree. This is part of the communal system.	
5.3.7	The invoices are at p.458 and 461. £518.78 in dispute. A contends that two visits were not required. This is judging the situation with the benefit of hindsight. The sum is payable.	
5.3.8	The invoice is at p.464. A contends that the sum charged was excessive and should have been part of the maintenance agreement. We disagree for the reasons stated by R.	
5.3.9	R recognises error. £946.40 to be credited to2018 accounts.	*
5.3.10	R recognises error. £1,732.39 to be credited to2018 accounts.	*
5.3.11	R concedes	*
5.3.12	No longer challenged	
5.3.13	A concedes £476; R concedes remaining sum of £492.	*
5.3.14	FTT has previously found that this is not a QLTA	
5.4	**Repairs & Maintenance (2016)**	
5.4.1	R concedes	*

5.4.2	A contends that there is duplication. R responds that Invoice 0114606 does not relate to Dorset House. The invoice at p.481 is payable.	
5.4.3	A contends that this is covered by the service agreement. We disagree.	
5.4.4	R concedes	*
5.4.5	The Tribunal has determined that this is not a QLTA.	
5.5	**Fuel for Boiler (2017)**	
5.5.1	No longer challenged	
5.6	**Repairs & Maintenance (2017) Part 1**	
5.6.1	A contends that the sum claimed at p.502 is excessive. He has not established this.	
5.6.2	A contends that this is covered by the service agreement. We disagree for the reasons stated by R.	
5.6.3	A contends that the invoice at p.504 should be charged to Flats 55 and/or 73. We disagree. This is part of the communal system. As R states, abortive visits do happen.	
5.6.4	A argues that the work in invoice at p.505 was unnecessary and that the charge was unreasonably high. We disagree for the reasons stated by R.	
5.6.5	A contends that the invoice at p.505 should be charged to Flat 45. We disagree. This is part of the communal system.	
5.6.6	The invoice is at p.507. We agree with R that A has misunderstood the nature of the work.	
5.6.7	A contends that the invoice at p.508 should be charged to Flat 45. We disagree. This is part of the communal system.	
5.6.8	No longer challenged	
5.6.9	No longer challenged	
5.6.10	No longer challenged	
5.6.11	A contends that the invoice at p.512 should be disallowed as the visit was abortive. We disagree. As R states, there are bound to be some abortive calls in a block of this size.	
5.6.12	A contends that the invoice at p.514 is covered by the service agreement. We disagree for the reasons stated by R.	
5.6.13	A contends that the charge at p.515 is excessive and should be charged to Flat 94. We disagree for the reasons stated by R.	
5.6.14	A contends that the charge at p.516 is excessive and should be charged to Flat 51. We disagree for the reasons stated by R. It is part of the communal system.	
5.6.15	No longer challenged	
5.6.16	No longer challenged	
5.6.17	R conceded	*
5.6.18	A contends that the invoice at p.520 is excessive and should be charged to Flat 51. We disagree for the reasons stated by R. It is part of the communal system.	
5.6.19	A contends that the invoice at p.519 should be charged to Flat 85. We disagree. A leak on the communal system is a service charge expense.	
5.6	**Repairs & Maintenance (2017) Part 2**	

5.6.1	A contends that the invoice at p.553 for £117.60 should be charged to a lessee. There is an annotation on the invoice to this effect. We accept R's evidence that the actuators are part of the communal heating system and that this invoice is properly charged to the service charge account.	
5.6.2	A contends that the charge at p.555 is excessive and should be charged to Flat 37. We disagree for the reasons stated by R.	
5.6.3	A contends that the work invoiced at p.556 should have be part of the service agreement. A has adduced no evidence to substantiate this.	
5.6.4	No longer challenged	
5.6.5	We reduce the sum claimed from £1,270.65 to £331.92. The work particularised in the invoice totals £331.92. There seems to be an error. R was unable to provide a satisfactory explanation.	*
5.6.6	A contends that the work invoiced at £280.80 at p.559 should have be part of the service agreement. A has adduced no evidence to substantiate this. We are satisfied that this was a leak to the communal system which needed to be remedied outside the service agreement.	
5.6.7	The invoice is at p.560. A contends that this was a design flaw which should have been recovered against the original pipework contractor. We disagree. DMG would only have drained down the building if it was impossible to isolate the flat.	
5.6.8	The invoice is at p.561. A contends that this should be covered by the service agreement. Further, 60% should be apportioned to the commercial units. We disagree. R state that this was a call out to the sump pump in the boiler house which did not serve the commercial units.	
5.6.9	The invoice is at p.562. A contends that this should be covered by the service agreement. Further 60% should be apportioned to the commercial units. We disagree for the reasons specified above.	
5.6.10	A contends that the charge at p.56,3 is excessive and should be charged to Flats 89, 152 and 173. We disagree for the reasons stated by R.	
5.6.11	The invoice is at p.564. A initially disputed this on the ground that the invoice was not sufficiently detailed. R has provided those details and we find that this sum is payable.	
5.6.12	No longer challenged	
5.6.13	A contends that the charge at p.565 should be charged to Flat 65. We disagree for the reasons stated by R.	

Issue 6: Pest Control

56. In the service charge accounts, the sums claimed for this service have been: 2014: £6,084; 2015: £7,044; 2016: £14,414; 2017: £4,884. Mr Norman's 0.7% share has ranged from £35 to £100 pa. He challenges all these charges.

57. In 2015, the Respondent paid a total of £7,044. The summary of the invoices is at p.583. The Applicants challenges the sums paid to First City Pest Control Limited and suggest that their charges of £5,232 should be reduced by 50%. No adequate evidence has been adduced to establish that the service provided has been inadequate or that any reduction should be made.

58. In 2016, the Respondent paid a total of £14,414. The summary of the invoices is at p.600. The Applicants argue that all this should be disallowed because the managing agents took no effective action when an infestation was first reported in December 2015. The Respondent state that a pest control service has always been required in this block. No adequate evidence has been adduced to establish that the service provided has been inadequate or that any reduction should be made.

59. In 2015, the Respondent paid a total of £4,883.92. The summary of the invoices is at p.601. The Applicants contend not only that this item should be disallowed, but that each tenant is entitled to compensation of £250 in the form of an equitable set-off. Again, no adequate evidence has been adduced to establish that the service provided has been inadequate. No evidence has been adduced by any tenant to make out a case for compensation.

Issue 7: Floral Display and Planted Areas

60. In the service charge accounts, the sums claimed for this service have been: 2014: £1,140; 2015: £1,164; 2016: £300; 2017: £1,200. Mr Norman's 0.7% share has ranged from £2 to £8 pa. Mr Norman challenges the sum of £1,200 for 2017. No particulars are provided for challenging this item, and we find that it is payable.

Issue 8: Communal Television and radio aerial system

61. In the service charge accounts, the sums claimed for this service have been: 2014: £35,195; 2015: £36,874; 2016: £39,312; 2017: £42,258. Mr Norman's 0.7% share has ranged from £250 to £300 pa. The Applicants seek to challenge a number of invoices ranging from £90 to £1,068. The Applicants have not identified any points of general principle.

Communal Television and radio aerial system Items Raised in Scott Schedule		
8.1	**2017**	
8.1.1	A challenge the invoice at p.619 for £1,068. R explains why this was a communal expense and should not be charged to two individual flats. Other flats had used up all the available connections, and this was the most cost-effective way to ensure that these flats had access to Sky. We accept R's explanation.	
8.2	**2014**	
8.2.1	A challenges three invoices for £120, £90 and £210. We accept	
8.2.2	R's explanation as to why they are payable.	

8.2.3		
8.3	**2015**	
8.3.1	The expenses for the year are at p.631 and total £36,873.91. A challenges one invoice of £360 because it has not been provided. We accept that this sum was paid and was reasonably incurred.	
8.4	**2016**	
8.4.1	A challenges three invoices for £324, £160 and £492. We accept R's explanation as to why they are payable.	
8.4.2		
8.4.3		

Issue 9: Health & Safety Sundries

62. In the service charge accounts, the sums claimed for this service have been: 2014: £5,155; 2015: £3,129; 2016: £5,461; 2017: £4,189. Mr Norman's 0.7% share has ranged from £20 to £40 pa.

Health and Safety Sundries - Items Raised in Scott Schedule		
9.1	**2014**	
9.1.1	No longer challenged	
9.1.2	No longer challenged	
9.1.3	R agrees credit of £24	
9.1.4	A challenge three quarterly charges of £26.10 (at p.643-645). This is the same issue as is discussed at [44] above. We are satisfied that this is a modest charge for an additional service which is payable and reasonable.	
9.2	**2015**	
9.2.1	A challenge an invoice for £248 on the basis that it is part of the boiler maintenance agreement. This is payable for the reason discussed in 5.1.20 above.	
9.3	**2016**	
9.3.1	A contends that the invoice of £4,351.98 (at p.648) is unduly high to clean and disinfect the cold-water tanks. R responds that an alternative quote was higher. A also suggests that part should have been charged to the commercial units. We are satisfied that it is payable and reasonable.	
9.4	**2017**	
9.4.1	No longer challenged	
9.4.2	The invoices are at p.651 and 652. We are satisfied that the sums charged for obtaining these reports are payable. They do not become payable upon production of the reports.	

Issue 10: Telephone and Pagers

63. In the service charge accounts, the sums claimed for this service have been: 2014: £2,684; 2015: £2,742; 2016: £2,863; 2017: £3,568. Mr Norman's 0.7% share has ranged from £20 to £25 pa.

Telephone and Radio - Items Raised in Scott Schedule	

10.1	A challenge £403.71 out of a total of £3,568 because invoices have not been provided. The summary is at p.654. Evidence of the invoices from Plusnet have now been provided. We are satisfied that these sums are payable.	
10.2	A seeks a deduction of £277.76 from a bill totalling £2,863 (see p.656). We are satisfied that this sum has been paid by the landlord and is recoverable through the service charge.	
10A.1	(2014) No longer challenged	
10A.2.1	(2015) No longer challenged	
10A.2.2	(2015) No longer challenged	
10A.3	(2016) No longer challenged	
10A.4	(2017) No longer challenged	

Issue 11: Refuse Removal

64. In the service charge accounts, the sums claimed for this service have been: 2014: £684; 2015: £ - ; 2016: £468; 2017: £1,046. Mr Norman challenges three items for 2017 which total £468; of which his 0.7% contribution is £3.28. The invoices are at p.658-661. Mr Norman suggests that these items relate to the storage room which is in the possession of the landlord and which are therefore not service charge items. The Respondent state that theses invoices relate to the removal of rubbish from alcoves in the ground floor area where the porters and cleaners collect items dumped by residents. There is nothing to contradict this explanation. We find that these charges are payable.

Issue 12: Insurance

65. In the service charge accounts, the sums claimed for this service have been: 2014: £127,467; 2015: £104,256; 2016: £123,762; 2017: £124,271. Mr Norman's 0.7% share has ranged from £730 to £900 pa. Mr Norman no longer pursues this challenge.

Issue 13: Audit Fees

66. In the service charge accounts, the sums claimed for auditing the service charge accounts this have been: 2014: £12,300 + £1,300; 2015: £12,900; 2016: £12,951; 2017: £13,400 + £400. Mr Norman's 0.7% share has ranged from £85 to £100 pa. The total service charge expenditure for 2013/4 was £1,548,473.

67. The Tribunal is satisfied that the audit fee is payable and that the sums charged have been reasonable. The Applicants have challenged six items. The Respondent has explained these items. Some merely relate to accruals. We are satisfied that the sums demanded are payable and reasonable.

Issue 14: Professional Fees

68. In the service charge accounts, the sums claimed for this service have been: 2014: £3,906; 2015: £550; 2016: £2,016; 2017: £4,264. Mr Norman's 0.7% share has ranged from £4 to £30 pa.

Professional Fees - Items Raised in Scott Schedule		
14.1	**(2013)**	
14.1.1.	R accepts that credit of £1,428 should be made	*
14.2	**(2014)**	
14.2.1	R accepts that credit of £270 should be made	*
14.2.2	This invoice for £493.44 is at p.686. A contends that this should be an insurance claim. R responds that this relates to an external defect which was not covered by insurance. We accept R's explanation.	
14.2.3	No longer challenged	
14.2.4	No longer challenged	
14.2.5	R accepts that credit of £234.10 should be made	*
14.2.6	No longer challenged	
14.2.7	No longer challenged	
14.3	**(2016)**	
14.3.1	A summary of the professional fees which total £2015.97 is at p.692. A contend that these should have been an insurance claim. R respond that this relates to structural cracking and water penetration from external defects which are not insurance perils. We accept that explanation.	
14.4	**(2017)**	
14.4.1	A challenge 8 invoices which total £4,267.18 (at p.701) on the ground that these should have been insurance claims. R responds that these charges were incurred to determine the cause of damp penetration, cracking and other defects about which residents had complained. We accept that this is a proper service charge item.	
14.4.2	A challenge an invoice for £330 (at p.710). R states that following the Grenfell fire tragedy a complaint was made that pipework replacement materials were dangerous and potentially toxic. We accept that R was obliged to investigate this complaint and that this is a service charge item.	
14.4.3	A challenge an invoice for £1,626 (at p.711) on the ground that the cracks were cause by works being executed in Flat 140 and should be charged to that lessee. R respond that the cracks pre-dated these works. The advice of a structural engineer was required to monitor these cracks. In the event, no more than filling and redecoration was found to be necessary. We accept that this was a proper service charge item.	
14.4.4	R accepts that credit of £748 should be made	*

Issue 15: Petty Cash

69. 2014: £964; 2015: £3,202; 2016: £4,469; 2017: £3,980.

Petty Cash - Items Raised in Scott Schedule		
15.1	**(2015)**	
15.1.1	No longer challenged	
15.1.2	This is payable – see [44] above.	

15.1.3	No longer challenged	
15.1.4	This is payable. This is the same issue as discussed at 5.1.20 above.	
15.1.5	R accepts that credit of £24 should be made	*
15.1.6	No longer challenged	
15.1.7	No longer challenged	
15.2	**(2016)**	
15.2.1	This is payable – see [44] above.	
15.2.2	This is payable. This is the same issue as discussed at 5.1.20 above.	
15.2.3	No longer challenged	
15.3	**(2017)**	
15.3.1	R accepts that credit of £204 should be made	*
15.3.2	R accepts that credit of £108 should be made	*
15.3.3	This is payable – see above.	
15.3.4	No longer challenged	
15.3.5	No longer challenged	
15.3.6	This is payable – see [44] above.	
15.3.7	This is payable – see [44] above.	
15.3.8	A initially challenged this invoice for £30 on the basis that no receipt was provided. That receipt has now been provided (at p.739). A now expects R to provide the circular to which this relates. We are satisfied that this cost was incurred and was a proper service charge item for which Mr Norman was required to pay 21p.	
15.3.9	This is payable. This is the same issue as discussed at 5.1.20 above.	
15.3.10	A challenges three items: £40 for shoes (p.742); £100 for a Christmas gratuity for Veolia/WCC refuse collection (at p.743) and a further £29.99 for shoes (p.744). R contends that it is contractually obliged to provide shoes for the porters and that the gratuity of £100 is manifestly reasonable for agreeing to take bulky items discarded by residents which would fall outside their contract. Despite this explanation, A maintains their objection which is manifestly without any merit. We are satisfied that these sums are payable.	
15.3.11	This is payable. This is the same issue as discussed at 5.1.20 above.	
15.4	**(2014)**	
15.4.1	We accept that this is an accountancy matter and not a service charge dispute.	

Issue 16: Management Fees

70. In the service charge accounts, the sums claimed for management fees have been: 2014: £87,270 (p.750); 2015: £87,270 (p.759); 2016: £102,000 (p.766); 2017: £91,800 (p.780). Mr Norman's 0.7% share has ranged from £535 to £610 pa. These sums include VAT. If this is excluded, the average charge per flat has been 2014: £364; 2015: £364; 2016: £425; 2017: £382.50. Mr Norman's 0.7% service charge contribution is somewhat higher than this.

71. The Applicants rely upon a quote provided by Rendall and Rittner dated 13 September 2017 in connection with their application for the appointment of a manager (at p.883-897). This application was struck out on technical grounds. Rendall & Rittner quote a fee of £330 + VAT per annum.

72. The Respondent states that the Rendall & Rittner contract annexes a long list of extras, most of which Parkgate do not charge. The Applicants note that Parkgate have not particularised the differences between the two contracts. It is rather for the Applicants to satisfy us that the management charge is not reasonable.

73. In our experience, as an expert tribunal, an average charge of £364 per unit is well within the range of what managing agents in Central London would charge for a complex block of this nature. The mere fact that Rendall & Rittner would charge slightly less, does not justify the conclusion that the sum charged by Parkgate is unreasonable.

Management Fees - Items Raised in Scott Schedule		
16.1	**Prior Years (2016)**	
16.1.1	A challenge a charge of £3,682. R respond that this is an accountancy matter. We accept this explanation.	
16.2	**(2014)**	
16.2.1	We accept that a charge of £364 per unit is reasonable for the reasons specified in [73] above. Separate audit fee is fully justified given the size of the budget. This is a safeguard for both landlord and tenant.	
16.2.2	We have found that the management agreement does not require Parkgate to provide the payroll service in house – see [30] above.	
16.2.3	We have found that insurance against employment claims is a reasonable expense – see [30] above.	
16.3	**(2015)**	
16.3.1	We accept that a charge averaging £364 per unit is reasonable for the reasons specified in [73] above.	
16.3.2	We have found that the management agreement does not require Parkgate to provide the payroll service in house – see [30] above.	
16.3.3	We have found that insurance against employment claims is a reasonable expense – see [30] above.	
16.4	**(2016)**	
16.4.1	In this year, the average charge per unit was increased from £364 to £425. R justify this increase on the ground that there were particular problems in managing the property in this year. A group of lessees had issued High Court proceedings challenging the landlord's ownership. This stalled the recovery of arrears and the entering of new contracts for some two years. This action failed and the lessees had to pay costs of £250,000. Given this unprecedented situation, we accept that the increase was justified.	

16.4.2	We have found that the management agreement does not require Parkgate to provide the payroll service in house – see [30] above.	
16.4.3	We have found that insurance against employment claims is a reasonable expense – see [30] above.	
16.5	**(2017)**	
16.5.1	The fee was brought down from £425 to £382.50 per unit average. We are satisfied that this charge is reasonable having regard to the continuing problems in managing this block.	
16.5.2	We have found that the management agreement does not require Parkgate to provide the payroll service in house – see [30] above.	
16.5.3	We have found that insurance against employment claims is a reasonable expense – see [30] above.	

Issue 17: Bank Charges (net of interest received)

74. 2014: (£948); 2015: (£773); 2016: (£1,305); 2017: (£724). The service charge accounts at p.85, 93, 101 and 109 include credits for bank charges, net of interest received. The Applicants contend that the landlord should have earned higher interest. The Respondent notes that many lessees were in arrears and had not paid their required contributions towards the arrears. We agree that this challenge has no merit. This is not a service charge item. It is rather a management issue, if anything.

Issue 18: Major Works Expenditure (Reserve Fund Contribution)

75. Clause 2(2)(xii) of the lease permits the landlord to establish a reserve fund. Mr Norman raises seven distinct issues.

18.1 Canopy and Forecourt Renewal (2013) (£523,155)

76. It is agreed that this challenge is premature as the expenditure has not yet appeared in the service charge accounts.

18.2 Renewal of 3 Boiler Burners (2014) (£58,000)

77. The Respondent included an estimate of £58,000 in the budget for 2013/4 for the renewal of the three boilers (see p.86). The replacement of the 1st Boiler was included in the 2016/7 bundle and is at p.813. The relevant invoices at p.815-8. The work was carried out by GTM who had provided the lowest quote of £13,440 + VAT (see p.819). Parkgate added a supervision fee of 10%, incorrectly as noted at [14] above. The total cost (inc VAT) was £23,254.56. Mr Norman's 0.7% contribution was £162.78. These works fall within Clause 2(xii) of the lease. The Tribunal is satisfied that this sum is payable and reasonable, but with an adjustment in supervision fee from 10% to 2.5%.

78. In 2018, the 2nd boiler was replaced. The work was completed by GTM in August 2018 at a cost of £21,069.60. In May 2018, the burner and gas booster were

replaced on the 3rd boiler by DMG Delta at a cost of £21,069.60. We are satisfied that these sums are payable and reasonable.

18.3 Rooftop Perimeter Safety Handrails (2014) (£50,000)

79. Mr Norman contends that these works were carried out for the landlord's benefit in the event that the top roof was developed for new flats. Mr Unsdorfer does not accept this. These guardrails were rather a health and safety requirement. This sum had been included in the budget for 2013/4 (see p.86). The need for these works was confirmed in a Health & Safety Risk Assessment. Mr Norman now disputes that these works were required on health and safety grounds. The Tribunal is satisfied that the landlord was entitled to conclude that these works were required.

18.4 Upgrade Smoke Checked Doors in Common Parts (£45,000)

80. It is agreed that this challenge is premature as the expenditure has not yet appeared in the service charge accounts.

18.5 Renewal of Cold Water Booster Pumps (£37,500)

81. An estimate of £37,500 was included for these works in the 2014 budget (see p.86). Mr Unsdorfer stated that following the failure of two of the three pumps, it was decided to replace all three. Four quotes were obtained. DMG Delta provided the lowest quote at £28,282.10. We are satisfied that these works are reasonable and payable.

18.6 Refuse Store Gates (2014) (£12,780)

82. The Applicants challenge the costs of replacing the roller shutter gates to the rear refuse rooms. There are two elements: (i) An invoice from R &R Lift Co Ltd, dated 20 August 2014, in the sum of £11,611.20 (at p.860); and (ii) an invoice from Parkgate, dated 11 November 2014 (p.861) which includes a 10% "agreed management fee" of £1,161.12 (inc VAT). Mr Norman complains that lower estimates were obtained for this work. In particular, a tenant obtained an estimate from Westwood Security Shutters Ltd in the sum of £2,040 (inc VAT).

83. The landlord responds that the Applicants are confusing different jobs. The estimates on which Mr Norman relies were for vertical roller shutters to replace the defective horizontal sliding gates to the two bin stores. However, the listed building consent mandated sliding horizontal gates. We accept this explanation, but with the management fee adjusted from 10% to 2.5%.

18.7 Boiler Plant (2017)

84. The Applicants challenge the decision to transfer £20,000 to the reserve fund in respect of "boiler plant". This entry appears at p.110. This is merely an

accountancy issue. There is no challenge to any actual expenditure on boiler plant.

Major Works Expenditure – Items Raised in Scott Schedule		
18.1	It is agreed that the challenge is premature	
18.2	The Parkgate supervision fee must be adjusted from 10% to 2.5%	*
18.3	Payable – see above	
18.4	It is agreed that the challenge is premature	
18.5	Payable – see above	
18.6	The Parkgate supervision fee must be adjusted from 10% to 2.5%. We compute that the fee should be reduced from £1,161.22 to £290.30.	*
18.7	An accountancy issue – see above	

Application under s.20C and Refund of Fees

85. The Applicants have challenged some 291 items of expenditure. They have only succeeded on a small number of these challenges. In such circumstances, we are not minded to make any order under section 20C of the 1985 Act. This decision may be academic as Mr Unsdorfer accepted that the Respondent is not entitled to recover its costs through the service charge.

86. The Applicants have also made an application for a refund of the tribunal fees of which they have paid pursuant to Rule 13(2) of the Tribunal Rules. In view of the small number of items on which the Applicants have succeeded, we are not minded to make such an order.

Judge Robert Latham
10 May 2019
Revised 18 July 2019

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

Appendix 1 – Schedule of Applicants	
Dorset House, Gloucester Place, NW1 5AQ	
Flat 6	Clive, Morag and Alexander Norman
Flat 11E, 17, 131	Jonathan Alvin
Flat 26	Kanchan and Sapna Mangiani
Flat 27A	Heather Mundy
Flat 28	Cyril and Heather Mundy
Flat 30	Leslie Pantucci & Aviae Nepotes Limited
Flat 41	Gita Somani
Flat 47	Jon Young
Flat 66	Neal Hollenbery
Flat 85	Arun Chulani
Flat 105	Mohammad Ali and Asefa Qayuum
Flat 108	Rita Pohoomal
Flat 109	Mina Mirpuri
Flat 118	Muhammed Ali and Muhammed Adil Rashid
Flat 123	Krishan Ramakrishnan
Flat 134	Fereshiteh Hafizi
Flat 136	Sheena Bhattessa
Flat 157	Mohamed Habib
Flat 158	K and J Somasundara Rajah
Flat 162	Angela Lemos
Flat 166	Ashan Ramakrishnan
Flat 173	Ramon, Iris and Geneviere Huss
Flat 181	Christopher Blin

Appendix 2 - Relevant Legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2018/0321**
Property	**:**	**Dorset House, Gloucester Place, London, NW1 5AH**
Applicant	**:**	**Mr Clive Norman (and 23 other lessees)**
Representative	**:**	**In person**
Respondent	**:**	**Dorset House Residential Limited**
Representative	**:**	**Simon Serota, Wallace LLP**
Type of application	**:**	**Costs – Rule 13(1)(b)**
Tribunal members	**:**	**Judge Robert Latham** **Mr Leslie Packer**
Date and Venue of Hearing	**:**	**3 July 2019 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**9 July 2019**

DECISION

DECISION

The Tribunal makes an Order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Applicants pay the sum of **£30,750** including VAT to the Respondent in respect of costs incurred by it relating to the determination of this application. The said sum is to be paid within 28 days.

The Background

87. On 28 August 2018, Mr Clive Norman issued an application seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 of his liability to pay service charges for the years 2014 to 2017. Twenty three other tenants have applied to be parties to the application and be represented by Mr Norman.

88. On 10 May 2019, the Tribunal issued its determination. The Tribunal had been asked to determine the payability and reasonableness of some 291 items identified in a Scott Schedule. We found that most items were payable, amounting to around 95% of the items challenged, by value. Our decision records where challenges had been conceded by the Applicant, concessions have been made by the Respondent and the few items which we disallowed. On 24 June, Mr Norman sought permission to appeal this decision. In a separate decision issued today, we have refused permission to appeal. But Mr Norman identified a number of clerical errors in our decision. We have issued a revised decision correcting these errors pursuant to rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("The Tribunal Rules"). None of these corrections affect the substance of the decision.

89. By a letter dated 15 May, the Respondent sought an order under Rule 13(1)(b) of the Tribunal Rules in respect of costs incurred by it relating to the determination of this application. On 30 May 2019, the Tribunal gave Directions for the determination of this application. Pursuant to these Directions, the parties have filed their written representations: (i) The Respondent's Statement of Case (dated 7.6.2019); (ii) The Applicant's Response (dated 17.6.2019); and (iii) The Respondent's Reply (dated 26.6.2019).

90. The Tribunal notified the parties that it considered that this application could be determined on the papers. However, on 21 June, the Respondent requested an oral hearing. In his written representations, Mr Norman had stated his intention to make detailed submissions on costs once the Tribunal had determined his appeal. At the oral hearing, Mr Simon Serota, a Partner with Wallace and Partners, Solicitors, appeared for the Respondent. Mr Norman appeared for the Applicants.

91. The Tribunal explained, and the parties noted, that Mr Geddes was not available for the hearing, so that the Tribunal's decision would be made by the two remaining members.

92. The Tribunal informed Mr Serota that it did not require submissions from the Respondent on the application for permission to appeal and that his appearance was restricted to the conduct of the Applicant in its conduct of the substantive proceedings. Both Mr Serota and Mr Norman made commendably concise oral submissions highlighting the matters raised in their written submissions.

93. There have been six previous applications and five determinations relating to Dorset House, two of which were heard together: (i) LON/00BK/LSC/2004/0094 (12 April 2005); (ii) LON/00BK/LSC/2009/346 (14 July 2010); (iii) LON/00BK/LSC/2011/0620 and LAM/00BK/2011/0019 (16 July 2012); (iv) LON/00BK/LSC/2016/0135 (5 January 2017); and (v) LON/00BK/LAM/2017/0020 (25 September 2017). Mr Norman represented the tenants in LON/00BK/LSC/2016/0135); and (v) LON/00BK/LAM/2017/0020.

94. The Tribunal have made two previous orders against Mr Norman under Rule 13(1)(b):

(i) On 10 January 2018, Judge Vance made an order of £8,256 in LON/00BK/LAM/2017/0020. On 25 September 2017, Judge Vance had struck out the tenants' application for the appointment of a manager because the tribunal had no jurisdiction to determine it because the requisite Section 22 Notice had not been served. Judge Vance had been satisfied that the applicants did not act unreasonably in bringing the application. However, the defect in the Section 22 Notice was highlighted at the Case Management Hearing ("CMH"). Despite this, Mr Norman had proceeded with the application on behalf of the applicants. It was this conduct that was found to merit a penal costs order.

(ii) On 18 December 2018, Judge Latham had made an order of £4,500 in the current proceedings. At the CMH, the Respondent challenged the Tribunal's jurisdiction to decide whether the Cleaning and Boiler contracts are Qualifying Long Term Agreements ("QLTAs") on the ground that this had been determined by a Tribunal on 5 January 2017 in LON/00BK/LSC/2016/0135. The parties agreed that this should be determined as a preliminary issue. On 26 October 2018, Judge Latham determined this issue in favour of the Respondent. The Tribunal was satisfied that the Applicant was estopped from revisiting whether the Cleaning and Boiler contracts are QLTAs by the principle of issue estoppel. The order was restricted to the costs in determining the preliminary issue (assessed at £2,500) and £1,250 for the costs associated with the Rule 13 application). The unreasonable conduct was Mr Norman's decision to continue to argue that this tribunal should revisit these matters despite the jurisdictional issue having been highlighted at the CMH.

Neither order was appealed.

95. Mr Norman informed the Tribunal that in each case he had personally paid the costs albeit that in the first case he was representing 83 other tenants, and in the current application he is representing 23 other tenants. We note that in the current application, the 23 other tenants have played no active role.

96. We record that on 5 July, Mr Serota notified the Tribunal that Dorset House Residential Limited had paid the penal costs ordered by Judge Vance. In a letter of 8 July, Mr Norman responded that he had nonetheless borne the cost. However, this matter does not affect our decision on the current application and the Tribunal need not come to a view on it.

97. The Tribunal's decision of 10 May 2019 (paragraphs 12-3) noted that our hearing was cut short after lunch on the second day of the hearing when Mr Norman became unwell. The Tribunal issued further Directions, indicating that we were satisfied that we could determine the application on the basis of the detailed written submissions. Both parties agreed that we should proceed on this basis.

The Law

98. Rule 13 of the Tribunal Rules provides in so far as is relevant to this application (emphasis added):

> 13. Orders for costs, reimbursement of fees and interest on costs
>
> (1) The Tribunal may make an order in respect of costs only:
>
> (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
>
> .....
>
> (ii) a residential property case;

99. Rule 3 sets out the overriding objectives and the parties' obligation to co-operate with the Tribunal. The overriding objective is to enable the Tribunal to deal with cases fairly and justly. This includes 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 both the parties and the Tribunal. The parties are under a duty to help the Tribunal to further these overriding objectives.

100. In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC)), the Upper Tribunal ("UT") gave guidance on how First-tier Tribunals ("FTTs") should apply Rule 13. The UT for the case consisted of the Deputy President of the UT and the President of the FTT. The UT set out a three-stage test:

> (i) Has the person acted unreasonably applying an objective standard?
>
> (ii) If unreasonable conduct is found, should an order for costs be made or not?
>
> (iii) If so, what should the terms of the order be?

101. The UT gave detailed guidance on what constitutes unreasonable behaviour. For the purpose of this application we highlight the following passage from the judgment of the Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205, per Sir Thomas Bingham MR at p.232C (emphasis added):

> "'Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable."

The Submissions of the Parties

The Respondent

102. The Respondent seeks an order for costs in the sums of (i) £21,437.50 in respect of legal costs and (ii) £15,324 in respect of managing agent's fees (both sums include VAT). Mr Unsdorfer, from the managing agents, represented the Respondent at the substantive hearing. He was accompanied by two other members of staff. We have been provided with a schedule of the managing agent's fees. The Solicitors were instructed by the landlord in September 2018. Mr Serota's charge-out rate as a partner is £625 per hour (which is very much at the higher end of the scale of what this Tribunal would consider to be reasonable). We have been provided with a Costs Schedule. £7,471.50 is claimed for reviewing our decision and drafting both the Respondent's Statement of Case and its reply. £2,187.50 is claimed in respect of the cost of attending the hearing. Mr Serota stated that this was on the basis of a hearing of 2.5 hours. In the event, the hearing was concluded in 0.75 hours. Mr Serota stated that the landlord has been invoiced, and has paid, sums in excess of the sums claimed in respect of their involvement in this application.

103. Mr Serota notes that the Applicants have challenged service charge expenditure totalling £407,507 in a Scott Schedule in which 291 items were identified under 18 heads of expenditure. Of these, the Respondent conceded 32 items totalling £17,227.91 in its response to the Scott Schedule or subsequently at the hearing. 52 items were conceded by the Applicant. Of the 207 items which fell to be determined by the Tribunal:

(i) Two items totalling £1,413.73 were determined in favour of the Applicant; and

(ii) 205 items were determined in favour of the landlord.

104. The unreasonable conduct is summarised as follows:

(i) The matters which the Tribunal described in paragraphs 9, 10 and 11 of our decision;

(ii) Raising and pursuing a vast number of challenges which were either misconceived and/or without merit, and/or without any supporting evidence.

(iii) Mr Norman's continual attempts to expand or alter the applicants' grounds of challenge.

The Applicant

105. Mr Norman did not accept Mr Serota's analysis of our decision. He suggested that the Tribunal would disallow more items when we reviewed our decision. He emphasised that he is not a lawyer and was representing himself. He notes that the Tribunal found a number of his claims to be legitimate. His long Scott Schedule was meant for mediation purpose. In the event, the Respondent refused to mediate. He states that the Respondent refused to engage with him unless he cleared his arrears. He attaches a number of documents to his Statement of Case. On 28 April 2017, Nilesh Shah responded to a 2014 Scott Schedule submitted by Mr Norman. Mr Norman then submitted a revised Scott Schedule and stated that he would be submitting similar schedules for 2015 and 2016. On 31 July, Mr Shah responded that the managing agents were under no obligation to respond to such schedules. Before any further schedules were sent. Mr Shah asked Mr Norman to settle his outstanding arrears of £35,826.98. This was not an unreasonable request.

106. The CMH was held on 18 September. It is apparent that a Scott Schedule was produced which was not broken down under any cost headings. Judge Andrew directed the Applicants to file a revised Scott Schedule with the cost headings clearly identified. Mr Norman states that the Scott Schedule was prepared in the hope that the matter could be resolved by mediation. Whilst Judge Andrew had accepted Mr Serota's suggestion that given the background to the application the case was not suitable for mediation, he nonetheless encouraged the parties to meet to see if the issues could be narrowed. On 18 October, a meeting was held which lasted just under five hours. The Respondent limited a second meeting on 7 December to two hours. In the event it lasted less than this.

107. Mr Norman also disputes the amount of the costs which are sought. He notes that at the CMH Mr Serota stated that Mr Unsdorfer, from the managing agents, would represent the landlord at the hearing. Mr Norman argues that any legal costs after this date are unwarranted and unreasonable. He also contends that the involvement of a partner charging an hourly rate of £625 was excessive when much of the work could have been done by a more junior member of staff.

Our Determination

108. The Tribunal must apply the three-stage test:

(i) Has the person acted unreasonably applying an objective standard?

(ii) If unreasonable conduct is found, should an order for costs be made or not?

(iii) If so, what should the terms of the order be?

109. The Tribunal is satisfied that Mr Norman has conducted the proceedings unreasonably. We would characterise this as the product of excessive zeal. As we noted in our decision, Mr Norman's Scott Schedule extended to 31 pages and raises 291 items under 18 heads of expenditure. He did not seek to identify the items which raise general points of principle. At the beginning of the hearing, we reminded Mr Norman that it is not the role of this Tribunal to micro-manage the manner in which a landlord maintains its service charge accounts. A landlord is entitled to a significant margin of discretion as to how it manages a block of flats. Mr Norman did not accept this. He rather sought to hold the managing agent to account for every invoice that it has paid over a period of four years.

110. Mr Norman sought to challenge service charge expenditure of £407.507. He was not only acting for himself, but also 23 other lessees. Although Mr Norman sought to challenge the quality of the service in respect of cleaning and pest control, he adduced no evidence to support his claim. None of the 23 tenants made witness statements. Whilst Mr Norman referred at the hearing to complaints by other leaseholders on various matters, he provided no evidence.

111. Throughout the hearing, we urged Mr Norman to focus on the significant items in dispute and to recognise the margin of discretion afforded to managing agents. Where the landlord had provided a full explanation, Mr Norman merely sought to identify new grounds of challenge. We sought to emphasise to Mr Norman that this approach was not acceptable. We regret that Mr Norman continued regardless, as deaf to our interventions as he was to any explanation provided by the landlord.

112. Mr Norman has shown no sense of proportionality, and in fact does not seem to accept the concept. Mr Norman's position was and apparently remains that each item of challenge raised an important point of principle and deserved equal attention regardless of whether his liability was £1,000 or £1 (in one case just 21p).

113. Further, evidence is almost entirely absent from Mr Norman's presentation of his case, either written or in the hearing. Whilst Mr Norman is a lay person, he is experienced in bring matters to the Tribunal and he knew, or should by now know, the sort of factual information and supporting evidence that is needed. Whilst 23 other leaseholders (out of some 200) joined in the application, none were willing to put their heads above the parapet to support the claims Mr Norman made. None attended the hearing; none made witness statements; there were no written complaints from them in the bundle.

114. Finally, Mr Norman, despite being a highly-qualified professionally person, shows no realism about the day to day practicalities of managing a large and

complex property, and the element of discretion and judgment needed by landlords and agents. This is evident, for example, where Mr Norman argued that contractors should have been pursued for past repairs which had to be revisited, with little thought of practicality or cost-effectiveness; or where he argued that insurance claims should have been pursued, notwithstanding the risk of multiple claims leading to higher future premiums, as the Respondent reasonably pointed out.

115. In all, we should make clear that Mr Norman showed no malice or improper motives. He was courteous at all times, and sensibly agreed after 1.5 days of hearing for the remaining issues to be dealt with on the papers. We recognise that his unreasonableness is rather a matter of excessive zeal, unrealism, and a persistent lack of understanding of either the practicalities of property management or the requirements of the legal process, despite repeated previous cases brought to the Tribunal.

116. Be that as it may, the costs which Mr Norman's conduct has generated are substantial, including Tribunal costs to the public purse. The Respondent has had no alternative but to address them in detail, relating as they did to over £400k of disputed costs. His conduct has been manifestly unreasonable in its consequences to others and it must properly be reflected in an award of penal costs.

117. The third issue is the size of any penal costs order. Mr Serota seeks costs of £15,324 in respect of the managing agents' fees. We award £14,500. We make a modest reduction in respect of the items upon which Mr Norman succeeded (less than 5%).

118. Mr Serota further claims legal costs of £21,437.50. We are satisfied that the landlord has paid legal fees in excess of this. We are further satisfied that there is no overlap between the sums now claimed and those awarded in respect of the preliminary issue. However, we have reduced this to £16,250. Mr Serota accepted that the sum claimed for the hearing (£2,187.50) needed to be reduced as it was much shorter than he had anticipated. The Tribunal had previously indicated that the matter could be determined on the papers. We are also satisfied that not all the work needed to be done by a partner charging an hourly rate of £625.

119. Mr Norman's main objection is to the fact that Wallace and Partners were involved after the CMH, when the managing agents stated that they would represent the landlord at the hearing. Given the size of the sums in dispute and the complexities of this application (largely created by Mr Norman), we are satisfied that the continued involvement of solicitors was justified.

120. To conclude, are satisfied that this is an exceptional case in which it is appropriate to make a penal costs order. We make an order in the sum of £30,750, namely £14,500 + £16,250.

Judge Robert Latham
9 July 2019

ANNEX - RIGHTS OF APPEAL

5. 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.

6. 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.

7. 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.

8. 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.