FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00MD/LIS/2019/0006**
Property	**:**	**Flat 45, Nova House, 1 Buckingham Gardens, Slough SL1 1AY**
Applicant	**:**	**Pell Buy It Investments Limited**
Representative	**:**	**Miss Jones of Counsel and accompanied by Mrs Pell, Mr Pell, Mr Bothwell and Mr Platt BSc (Est Man) FRICS FIRPM**
Respondent	**:**	**Ground Rent Estates 5 Limited**
Representative	**:**	**Mr Allison of Counsel accompanied by Mr England and Mr Novak**
Type of Application	**:**	**Application for the determination of the reasonableness and pay ability of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Miss M Krisko BSc (Est Man) FRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 5th and 6th September 2019**
Date of Decision	**:**	**25th September 2019**

DECISION

DECISION

1. The Tribunal makes the determination set out below in respect of the various matters in dispute.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) it considering it just and equitable so to do, the reasons for which are set out below.

BACKGROUND

1. By an application dated 18th March 2019 Pell Buy It Investments Limited (the Applicant) applied to the Tribunal for a determination of the liability to pay and reasonableness of service charges under section 27A of the Act. The hand written application seeks to challenge the years 2015 to 2019 inclusive and also makes application under section 20C of the Act and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The Respondents to the application are Ground Rent Estates 5 Limited who were registered as proprietors of the development at Nova House, Buckingham Gardens, Slough on 21st August 2017.

2. The Applicant is the leaseholder of Apartment 45 in Nova House subject to the terms of the lease dated 19th November 2015 between TPS Nova Limited (1) and the Applicant (2) for a term of 999 years from 29th September 2015.

3. Ringley Limited are the appointed managing agents and have held that position since the building was developed, it previously having been an office block.

4. In the application the Applicant sought to challenge a number of matters which had a common thread throughout the years on dispute. These were as follows:

    - The costs of gas heating and hot water
    - Common parts water
    - Window cleaning
    - Building insurance
    - Cost of cladding replacement
    - Use of Land Rover
    - Lift maintenance
    - Electrical maintenance
    - Grounds maintenance
    - Management fee
    - Abseiling/pigeon prevention costs
    - Concierge.

5. In addition to these various matters there have been issues relating to fire protection costs, in particular fire wardens. However, that is not a matter that we can concern ourselves with as a previous decision has already been issued in that regard in case reference CAM/00MD/LSC/2018/0050 where it was found that the cost of the fire marshals and walking fire marshals at the property was a reasonable amount and recoverable. The Applicant sought to appeal that

decision but on the 20th May 2019 that application for permission was refused by the Upper Tribunal.

6. Before the hearing we were provided with bundles of papers running to some 757 pages. These papers included the application and Tribunal directions, the parties' statements of case and witness statements from Peter Bothwell, Michael England and Miroslav Novak.

7. Prior to the hearing we were provided with what purported to be an expert's report from Mr Jeffery Platt dated 21st August 2019. We will return to that document in due course.

8. The Respondent's statement of case addressed the various issues that were set out in the application and set out the various terms in the lease relevant to the matters that we were required to determine.

9. At paragraph 25 it said the following: *"For the avoidance of doubt, there was no demand for service charges in 2015, and no budget or accounts for 2015. Residents only started moving into the development in October and November of 2015 and until the 1st January 2016 (which was the due date of the first demand) all site expenses and maintenance continued to be arranged and paid for by the developer and its contractors."*

10. It appears that accounts for the years 2016 and 17 are available but 2018 accounts have yet to be finalised. Within the papers we had budgets for 2018 and 2019. There was also issues with regard to the lack of the accounts but the Respondents relied on various letters sent, for example on 27th June 2018 under provisions of section 20B of the Act advising the lessees that expenses had been incurred and would in due course be sought from them.

11. We considered the terms of the lease insofar as they were relevant to this application. We also had before us the Applicant's statement of case with a large number of exhibits. The statement of case acknowledges that there had been three freeholders, TPS Nova Limited, Freehold Properties 42 Limited and the current Respondents. It is acknowledged also that Ringleys the managing agents have been involved throughout this period.

12. This statement of case is common to both parties and contains a good deal of vitriolic statements attacking the honesty of various people associated with the Respondent and includes statements of dissatisfaction with the manner in which the application was processed by the Tribunal. None of this assists us greatly in resolving the issues between us. We have noted the specific references to the service charge items that are, by reference to this statement, disputed, although it will be noted that in the evidence given to us at the Tribunal a number of these matters fell away and we will deal with those accordingly under each heading.

HEARING

13. Miss Jones submitted some additional papers and confirmed that as no permission had been granted for Mr Platt to present his evidence as an expert, he would be tendered as a witness. Mr Allison said that he would have objected if

Mr Platt had been put forward as an expert without permission been granted by the Tribunal but had no objection to him giving evidence as a witness.

14. He then highlighted difficulties in connection with the service years 2015 and 2016. The freehold at that time appeared to be held by Freehold Properties 42 Limited who were not a party to these proceedings and in his view, therefore, no findings could be made against them as they were not a party to the application. Any findings we might be encouraged to make could not be enforced against that company. As we indicated above, it was known to the Applicants that there had been three freeholders.

15. Miss Jones complained that this had been raised very late in the day and had it been put forward by the Applicant's solicitors in their undated statement of case, it would have been possible for applications for amendment to have been made. Certainly the Respondent's statement of case does not raise this as an issue and appears to address the service charge years of 2015 and 16 for as we say they indicate that there is no claim for 2015.

16. Initially Miss Jones asked that the matter be adjourned so that Freehold 42 could be joined and also perhaps by that time for the 2018 accounts to be made available.

17. Our view on this and our findings was that it would be appropriate to record that the Respondents have themselves said that there is no claim in respect of service charges for 2015 and accordingly any payments that may have been made, we were told by the Applicant some had been sought, in respect of that period would seem to have been wrongly demanded. Insofar as the year 2016 is concerned, we felt it appropriate to consider the service charges that have been claimed but accept that we can make no specific findings which bind Freehold 42. From 2017 onwards there is no problems.

18. Miss Jones told us that as a result of the disclosure of some documentation, the challenge to the building insurance is no longer a matter that we need to consider. We should record here the fact that in the Applicant's statement of case an attack is made on Mr England accusing him of having lied at a Tribunal hearing in November of 2018 yet now with the production of some correspondence within the bundle the allegation that the insurance is an issue has been withdrawn. There appears, therefore, to have been no merit in the allegations made against Mr England.

19. The first witness called for the Applicants was Mr Bothwell who had made a witness statement on 31st May 2019. We had the opportunity of reading that witness statement and hearing from Mr Bothwell. He is a tenant of the Applicant and has lived at the Flat since November of 2015. He indicated in his statement that it was *"an absolute nightmare living here and I only carried on staying in Nova House because I can see the efforts of my landlady to try and sort out numerous issues for me. It breaks my heart to see the way in which an elderly lady who is not in the best of health has striven to assist me in the face of constant problems and a terrible attitude by all the freeholders (three to date) and the managing agents Ringley."* His complaints related to the refuse bin area, although he accepted that that had now significantly improved over the last

six weeks or so and that there were now two collections a week. He challenged the works undertaken by the concierge and was of the view that he fulfilled little of his job description, which was included within the bundle. He was critical of the gardening, indicating little was needed and that there was no rubbish removal of litter that was deposited in the flower beds. Reference was made to pigeons, in particular it seemed that pest control matters had resulted in their moving from the fire escape to his and other balconies. There was a suggestion that the infestation of bed bugs in his apartment was as a result of these pigeons. He confirmed also that window cleaning to the flat windows had never been undertaken and that the common parts windows had not been cleaned for some considerable time.

20. He was asked questions by Mr Allison on behalf of the Respondents and it was put to him that the state of the bin area was down to the usage by residents but he responded that the number of bins available were inadequate and this made it difficult for residents to leave rubbish in the bins. He also thought that the concierge did little to justify the monies paid for his employment and referred in particular to a dead rat that he had seen which had been in place for a day and was in fact removed by the fire watch.

21. He acknowledged that the lift had become more reliable and was asked about his understanding as to the water supply to the flat from Thames, which he accepted was metered and that data energy bills for the hot water and heating were sent direct to the Applicant but that he paid them. He paid for the water used in his flat.

22. At the conclusion of his evidence we then heard from Mr Platt, who is an experienced, well qualified Chartered Surveyor. He had provided the report on the basis of expert evidence having been instructed by the Applicant on 21st May 2019. As we have indicated above, no application for this evidence to be adduced at the hearing was made by the Applicants and accordingly it was not possible for him to tender his evidence as an expert, without permission having been granted in advance.

23. His evidence was therefore very limited. He was merely tendered by Miss Jones and Mr Allison had few questions to ask him relating to factual matters. We did discover, however, that Mr Platt had not visited the Property and that some of the figures that he had been considering in respect of gas costs were based on a budget, which had subsequently been withdrawn.

24. This was the full extent of the Applicant's evidence. There was no witness statement from Mrs Pell or her son, merely the statement of case to which we have referred to above.

25. The first witness tendered on behalf of the Respondent was Mr Michael England who had made a witness statement dated 3rd June 2019 that we had the opportunity of reading in advance of the hearing. He was asked about the payment to Ringleys for their management charges and confirmed that these increased by 5% each year. He confirmed that he was content with the current arrangements given the circumstances of the building.

26. The background to the building is set out in this witness statement and it is worth just referring to those issues briefly. It appears that the Respondent has been made aware that the cladding to the exterior of the premises has been tested and has been found to be similar to that of Grenfell Tower. Accordingly it requires replacement. This was apparently discovered following Building Research Establishment testing. In addition also, the Respondent has been made aware of several compartmentation issues within the building and the inadequacies of the fire resistance in the steel structure. There have been discussions with the Royal Berkshire Fire and Rescue Service and it is the Respondent's intention to implement these changes as quickly as possible.

27. In the interim the Respondent has arranged for a 'walking watch' to be put in place and this was the subject of the earlier proceedings to which we have referred to above. The Respondent, he says, are still pursuing insurers of the premises and third parties in attempt to recover the cost both of the interim measures and the works which will be required. If successful he was hopeful that the leaseholders would be reimbursed. He also confirmed that the Respondent has informed the Ministry of Housing and Local Government that they intend to make a bid against the fund announced by the Government in May of 2019 and if successful those funds will also be offset against the costs arising for the leaseholders in respect of these works.

28. In connection with the insurance for which he had been unfairly attacked by the Applicant, he confirmed that insurance had been in place at all times and relied on the statement of case.

29. He was of the view that the costs in respect of service charges for 2016 to 2019 had been reasonably incurred and were payable by the Applicant. He also confirmed there were no service charges for 2015.

30. In comments to us at the hearing he confirmed that there may be a review of management arrangements once the building has been "fire-proofed." At the moment, however, he placed great store on stability by continuing to have Ringleys involved. He told us that Ringleys are now dealing with visits by the Board on a monthly basis as well as liaising with and arranging attendances by experts to deal with the outstanding issues.

31. On the question of the concierge, whilst he could see an argument to move to a different responsibility, also he felt that it gave continuity and for the 68 residents in the building, which is potentially unsafe, he provided a level of comfort. He was not able to give any indication as to the level of fees paid to the agency who provided the concierge nor could he give any assistance on the heating and hot water issues. He did tell us, however, that the freehold Respondent is now controlled by Slough Borough Council because they did not consider that the people in control of the Respondent had the ability to deal with these serious issues in respect of fire safety. This apparent change of control had occurred in March of 2018. There had been long negotiations with the Fire Service and Building Control in the hope that works could be undertaken without the need to vacate the building and it seems that that may now be possible and it is hoped that the rectification works will be approved by the end of this year or

the beginning of next. He confirmed also that legal action was to be taken against those considered responsible but it was a slow process.

32. A specific point concerning the use of a Land Rover was raised. He was asked why it was required as it was not there as part of the fire prevention issues. His response was that it was part of the equipment of the walking watch and he made the point that the Respondents had not yet charged any of the costs associated with the walking watch to the leaseholders and will not do so until the outcome of claims against other parties. The walking watch costs are apparently being funded by loans from the Slough Borough Council.

33. After the lunch adjournment we heard from Mr Novak who is a property manager at Ringleys and employed in that role since July 2016.

34. We noted the contents of the witness statement which listed the issues under paragraph 7 which we have set out above. He then went on to deal with each of those specific items and confirmed that in respect of notices sent under section 20B of the Act, these documents had been produced by Ringleys. He confirmed that he had arranged for certified accounts to be made available as quickly as possible and certainly with the papers we had the 2017 accounts. As to the section 20B notice dated 27th June 2018 he told us this was drafted by Ringley Financial Account Services and mail merged to all leaseholders including the Applicant. The letters were thereafter printed and organised for post by the outbound team and on 27th June 2018 were sent by first class mail to each leaseholder.

35. He told us that the Applicants have failed to make payment of any service charges since July 2016 and that this failure is a breach of the Applicant's covenants under the lease. Notwithstanding this failure, Ringleys and the Respondents have continued to manage and comply with the landlord's covenants under the lease.

36. We noted all that was said concerning the items of expenditure. In respect of the concierge he confirmed that he had not received complaints from others regarding the concierge or the duties that were undertaken but he could make no comment on the salary paid to the concierge as that was a matter between that person and the agency. What it did provide, however, was cover seven days a week which also would include cover for illness and holidays.

37. Much had been made of the gas charges and in the witness statement Mr Novak was able to explain in more detail how this worked. He confirmed that the heating and hot water charges to the apartments were charged on an actual usage basis metered by way of individual heat meters read remotely and charged individually. The system he said operated in accordance with the Heat Network (Metering and Billing) Regulations 2014 and that these costs did not form part of the service charge and were not included within the budget. What was included within the budget was what was somewhat confusingly called the gas charges for the communal boilers payable he said in accordance with the terms of the lease. It was accepted that there had been some issues with the heating system but he considered that it was now far more efficient.

38. He dealt also with the common parts water, which he confirmed was not a duplication of the heating or hot water costs. The water payments were described to us; each flat has its own water meter for water used within the flat and this is charged directly and paid by lessees to the water company. In addition there is charge for water to the four central boilers as well as the communal supply to a tap and the staff accommodation. The later costs are billed separately. He confirmed that Ringleys included the common parts water usage costs only in the accounts, because as indicated above each individual leaseholder has their own meter for water supplied to the flats.

39. He was able to confirm that the communal windows had not been cleaned since the discover of the dangerous cladding because this was due to uncertainty as to when the works would be undertaken. He confirmed that the budget for 2018 and 19 included no provision for window cleaning and the 2017 accounts contained no charge for this matter. Cleaning of flat windows was the responsibility of individual leaseholders. Reference to insurance and cladding had no relevance in the case and in relation to lift maintenance he confirmed that there had been a change of contract from Otis to Trademark Lifts Limited which resulted in a lower budget for 2018 and in his view an improved service. He dealt briefly with the electrical and grounds maintenance and in respect of management fees confirmed the agreement with the landlord allowed for a 5% increase and apparently the agreement had been dealt with under the qualifying long term agreement provisions.

40. The question of additional refuge collection, health and safety inspections and abseiling equipment and pigeon proofing was referred to.

41. In cross examination from Miss Jones, he confirmed that it was the developer who had originally conceived the idea of a concierge, which was employed through an employment agent, Property Management Recruitment, but there was no relationship with that company and Ringleys. He considered that the agency arrangements gave flexibility and that the person who carried out the task had knowledge of the building and tenants and given the state of the building it was important to have this continuity. There had been consideration to change in 2017 by appointing a caretaker but the person who had been hired did not want to carry out the items set out on the job description and the Respondents reverted to the concierge. This was under review and it may well be in the future that the concierge will change to perhaps a caretaker who will have other duties. For the moment, however, he confirmed it was his priority to make sure the building was safe and the concierge was part of that. He confirmed that the concierge worked six days a week from 7.00am to 1.00pm and it was a full time position. Whilst accepting it was a high expense he confirmed that the current concierge played a vital role at the building and they would be reluctant to change at this stage.

42. He gave further information on the arrangements for the charging of gas, hot water and heating which seemed to assist the Applicant in understanding the basis upon which the Applicant company had been billed.

43. Asked about the grounds maintenance he confirmed that the specification had been altered with more emphasis on litter picking and attending to the bin store. He did point out, however, that the Property was in close proximity to Slough

High Street and that litter was often blown into the garden. He confirmed the arrangements for lift maintenance and the change of contractor.

44. He was also asked about invoices that were addressed to parties who were not involved in the Property, such as Adriatic Land and Hudson Freeholds. He thought that this was merely an error on behalf of the company that issue the invoices because the bills he said were correct and referred to the Property.

45. On the second day of the hearing we heard from Counsel for both parties who made submissions. Mr Allison went first and took us to the various terms of the lease which he considered to be appropriate in this matter. He confirmed that the lease made specific reference to concierge and that that person was fulfilling specific requirements. He alluded to the arrangements with regard hot water and gas and that the gas to the boiler was not in effect serving individual flats but provided a form of "float" to provide such heating during the year. It is only any shortfall that would be recoverable as a service charge because the intention would be that the cost to the individual leaseholder would cover the expense of the gas and running the system.

46. He referred us to the fact that it appeared that estimates for service charges were prepared not wholly in accordance with the terms of the lease but that in his view did not invalidate the budget. A close consideration of the relevant sections was undertaken and in particular the 6th schedule part I paragraph 3 which has two sub-paragraphs and the definition of maintenance charge contained within the lease. His submission was that the demands made in January and July requesting 50% payment in relation to the estimated costs were valid.

47. He then turned to the issue of section 20B notices. One had been served in 2017 and there was no evidence that it had not been received. He reminded us of the evidence of Mr Novak and the manner in which this was dispatched. He reminded us that the Respondents did not send out the estimates but only took over in 2017 and those accounts were now available.

48. He reminded us that the block was occupied as to 75% by short term tenants and that there had been no alternative costs put forward for any of the items in dispute.

49. He pointed out that in respect of the budget for 2018 the Applicants had used the wrong budget which we were referred to and the 2019 budget was perfectly reasonable.

50. Miss Jones on behalf of the Applicants asserted that the section 20B notice for the year 2017 had not been received. There was no evidence adduced to us that it had actually been posted and no certificate of posting was produced. This countered the assertion by Mr Allison that the provision of notices is set out at clause 8 of the lease which confirms that service by ordinary post in a pre-paid letter to the address of the person shall be sufficiently given. The Applicant's address is recorded as Hazelwood, Tenterden Grove, London NW4 1SX. It is said that the Applicant did not receive the letter referring to s20B dated June 2018 but did receive those for the year before and after.

51. Miss Jones confirmed that time having been taken to explain the services relating to heating and hot water, there was now no longer any challenge. She did, however, assert that the challenge was made because of the confusion between the amounts charged and the payments received and the lack of explanation as to the meter figures.

52. She confirmed there was now no challenge to window cleaning other than it should not have been included within the estimated charge. Insofar as the water charges were concerned, these were now explained and were not in dispute.

53. She was critical of the fact that there was still no 2018 accounts available.

54. She was of the view that the retention of a concierge was unnecessary and that a caretaker would be a better option. The job description available did not appear to bear much relationship to what the concierge actually did, the more so as there was now a fire watch and the gardeners appeared to deal with the bin area. She was critical of the fact that the Respondent appeared not to have tested the market to see what costs of a concierge might be.

55. She referred to Mr Bothwell's evidence and the lack of grounds maintenance and the fact that excessive funds appeared to be spent in this regard. In relation to the management fee to Ringleys, she asserted that this had nothing to do with the Grenfell disaster as the 5% uplift had been applied each year since the start. There was she said no more evidence that there was considerable additional work on the part of the managing agents.

56. In respect of the electrical maintenance issues, the explanations given meant that that was not now challenged nor was there any challenge to the lift costs given the evidence supplied. She was, however, concerned that it appeared that Otis had not been paid the full amount due and that this may appear as a service charge in the future.

57. On the question of the budgets, it was accepted she said by the landlord that these had been set early and that in so doing they were coming out too soon and likely that they would be unrealistic. The demanding of money early was not acceptable, although it was pointed out to Miss Jones that the Applicant had not paid the estimated charges in any event.

58. In respect of section 20C applications, it was asserted by her that the Applicants had incurred costs as a result of the lack of proper explanation of the issues which had been resolved in some cases in the hearing on the day before. Many of the points raised, she said, had merit at the time they were raised. The attitude and communication of the managing agents was dire causing this action to be started.

59. Mr Allison reminded us that we should bear in mind it was just and equitable as to whether or not an order under s20c should be made. Invoices had been made readily available on the website and he asserted it was not necessary for the Applicants to have bought the application. Mr Allison conceded that there appeared to be no right to claim costs and that accordingly an application under paragraph 11 schedule 5 of the 2002 Act would not be resisted.

THE LAW

60. The law applicable to this application is set out below.

FINDINGS

61. We bear in mind the early submissions made by Mr Allison concerning the ability to of the Applicants to seek to recover service charges for the years 2015 and 16. Nonetheless, we think it appropriate to at least make some comments on the earlier years. As we have indicated, in respect of the year 2015 we rely on the Respondent's admission that there were no service charges payable for that period. In respect of the 2016 accounts, on the fact of it they seem to be acceptable, although we query the gas heating costs of £25,823 as this seems excessive particularly when one considers the expenditure for the following year where the total cost is shown as £3,519. It seems to us that if the matter was being dealt with properly on the basis of metered costs to individual lessees, this sum is subject to challenge. The only other item of expenditure that we would question is the staff costs of £35,406. This of course pre-dates the Grenfell disaster and it is noted that in 2017 the costs have decreased. Again, were this to be a matter that we were to consider we would have expected some explanation as to how that cost had been amassed.

62. In addition in respect of the 2016 accounts, points were raised by the Applicant that some invoices appeared to be raised of companies such as Adriatic Land 3 Limited and Hudson Freeholds Limited. There appear to be invoices from British Gas which refer to Adriatic Land but equally appear to refer to the subject premises. The same applies to an invoice from LCM Services Limited although addressed to Adriatic Land clearly refers to Nova Slough with a reference. The same can be said of the invoice from Thompson Environmental Services again specifically referring to works carried out at Nova House. The same can be said of a Pumps (UK) Limited invoice of 13th December 2016 which again refers to Nova House.

63. The same cannot be said of an invoice by JSD Electrical and Security Limited to Hudson Freeholds Limited. This makes no reference that we can see to Nova House and accordingly were we being required to consider the 2016 accounts, it seems to us that the sum of £302.40 should be deducted from the maintenance charge as there is no clear evidence that this applied to the subject Property.

64. We turn then to the 2017 accounts. As a result of the evidence adduced by the Respondents and following Miss Jones's submissions to us, it appears to us that we are really only left having to consider the costs of the concierge, grounds maintenance, heating/hot water and management.

65. In respect of the concierge, it seems to us that this is a somewhat grand title for a caretaker. No comparable evidence was put to us as to the costs of employing a caretaker other than that which was set out in Mr Platt's expert report which of course we cannot consider. There is no doubt that the costs are quite high but we do understand the Respondent's wish to retain some consistency of approach in respect of the care of the Property. If the concierge/caretaker were employed

directly by the Respondent, or indeed the managing agent, there would be additional costs to meet such the employer's tax liability, National Insurance, cover for illness and holidays. This would inevitably increase the amount and may well take it up to somewhere near to the costs currently being paid for a concierge. We do, however, think that a caretaker might be a better option and that person should, we would have thought, be able to cover some of the cleaning, particularly the bin areas and litter picking and may be some of the internal cleaning as well. On the basis of the lack of evidence given to us by the Applicant we propose to make no reduction to the actual costs associated with the concierge for 2017.

66. When one considers the budgets for 2018 and 2019 we have borne in mind that the original service charge budget for 2018 was substantially different, in particular with regard to the fire warden costs, than the actual budget, which we were required to consider at page 249 of the bundle. The difference was of course associated with the fire warden costs of £312,000 and the fact that the gas for the communal boilers had been estimated originally at £28,000 but reduced to £5,000. In truth neither the budget for 2018 nor 2019 was challenged to any degree by the Applicant at the hearing. It was of course made clear that once final accounts are produced then it may be matters could be revisited at that time, but insofar as we could tell from the budget for 2018 there was nothing shown thereon which seemed out of line with previous costs and accordingly we find that the budget for that year is acceptable.

67. In respect of the budget for 2019, with the assistance of the notes to be found on page 256 of the bundle, became apparent that the figures that were being suggested were again reasonable. The reserve for the gas for the communal boilers of £5,000 seemed perfectly acceptable and there was a sum of £19,576 shown as common heating hot water which appeared to be a possible upgrade of the system. Again, these are only estimated charges. The proof of the pudding, as it were, will be in the final accounts when they are issued. Accordingly our finding is again that the budget for 2019 at page 256 of the bundle, not really challenged by the Applicant, is reasonable and payment should be made.

68. We must then deal with the issue concerning the notice under section 20B dated 27th June 2018 in respect of the 2017 accounts. The Applicant alleges that this is a fake and that JB Leach had produced this fake document. The Applicants admit receiving the section 20B letter in 2017. We heard all that Mr Novak had to say on this point. The lease as we have indicated above provides for service of notices at the address given by the tenant and to be served by ordinary post. We accept the evidence by Mr Novak that this was done and although there is no certificate of posting it seems to us that the evidence that is available supports the contention on the part of the Respondents that this notice was sent to the Applicant. We, therefore, find that there are no issues in respect of section 20B that affect this case. The 2018 and 19 accounts are budgeted only and we understand that notices have already been sent out in respect of the 2018 figures. Whether or not this becomes an issue will depend upon whether the balancing charge exceeds the amounts paid on account. Reference to the Windermere case by the Applicant does not seem relevant to this matter. Accordingly we reject any argument that section 20B applies to the service charges in this case.

69. We should also make it clear that in approving the accounts for 2017 we make no finding in respect of the H&S figure including compartmentation and fire watch of £255,282. Only part of this was determined by our colleagues earlier in the year. It seems from a review of the figures that the amount that was included within the finding by our colleagues for the Abbott costs was £127,247. We make no finding in respect of the balance of that cost of £128,035, which is reserved to another occasion once the costs to payable by the leaseholders has been established following the fire works. We would also mention as a comment that other costs such as insurance and other matters may of course be possibly included within a claim that could be made against third parties or in respect of the Government fund if it can be shown that those costs have been increased as a result of the threats of fire.

70. One other matter that we should deal with is the question of the accounting arrangements. It is accepted that the Respondents did not strictly adhere to the terms of the lease in respect of the recovery of estimated service charges. However, this seems to be something of an empty argument because as we understand it the Applicants have made no payments in respect of these estimated charges and are in respect of the year 2017 at least now facing actual costs. In respect of the years 2018 and 2019 demands have been made and are payable. Under the 6th schedule part I it requires the landlord as soon as practicable after the 1st April in each year to provide estimates of the sums to be spent on matters specified in part II of the of the schedule and thereafter notify the tenant of such estimated costs. The tenant is required to make payment within 14 days of the demand. There is then a balancing process at paragraph 3 of the 6th schedule part I where any deficiency or excess in the actual management costs of the preceding year are brought into account. It appears to us that whilst the Respondent may have sent demands out in January and July of each year, there is no specific date set out in the 6th schedule part I as to when the demand should be made other than as soon as practicable after the 1st of April. Clearly demands are sent in July and could on that basis include the totality of the estimated management costs.

71. It is a matter that could perhaps be reviewed by the managing agents but from our point of view given the fact that the Applicant has not paid any of these estimated charges, this seems to be a matter that does not really need to exercise us any further.

72. The final issue is that of costs under section 20C. It was put to us by Miss Jones that these proceedings have been incurred as a result of the lack of proper explanation on the part of the Respondents and it was only by coming to the hearing that a number of matters had been clarified. The response from Mr Allison was that the Applicants could have checked invoices on the website and in his view this application did not need to be made.

73. There is no doubt that an admission was only in the Respondents statement of case that there were no service charges for 2015, after proceedings had been commenced. The paperwork issued that we have seen would appear to indicate that there was some attempt to charge for services in that year. However, it is quite clear that the Respondents do not consider there was anything payable. In respect of 2016 it was only on the morning of the hearing that Counsel raised the

point that these were costs owed to and from another landlord who was not a party to these proceedings. It is surprising that this was not a point raised by the Respondents in their statement of case. It is, however, noted that the Applicant was aware that there had been at least three freeholders but it is a company which on the face of it is controlled by Mrs Pell and her son who are in effect litigants in person.

74. It is noted that there were changes to the estimated costs, as we have highlighted above (para 23, 66 and 67) when a substantially different budget was eventually put to the leaseholders. This caused some confusion.

75. There have also been issues raised with regard to the method by which the estimated charges were levied and strictly speaking it would appear that it may not be in accordance with the terms of the lease but for the reasons we have set out above it is not a matter that we think should be taken any further. However, there is blame on both sides. In those circumstances it seems to us to be just and equitable to order that there should be a section 20C order in favour of the Applicant in this case. This is the more so as during the course of the hearing explanation was given as to method for which heating and hot water was charged, which was not wholly clear and clarification became available as to other issues. In those circumstances as we have indicated we make an order for section 20C to apply in this case we considering it just and equitable so to do.

76. Mr Allison accepted that there was no entitlement for the Respondents to recover the costs under the provisions of schedule 11 to the 2002 Act and accordingly it would be appropriate to make an order that under section 5A such costs if any cannot be recovered.

77. This is a block with substantial problems. It is comforting to see that the Local Authority has now provided the backing to the freeholder to deal with the fire prevention works and we would hope that as these issues become resolved there may be comfort to be had from claims against third parties or the Government's funds to ameliorate any liability that the lessees may have and when the Property becomes less stressful, reviews as to the retention of a concierge as opposed to a caretaker with perhaps expanded areas of operation would be an appropriate step to take.

Judge: A A Dutton

Date: 25th September 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 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 to 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 (ie 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 of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
   (a) complied with in relation to the works or agreement, or
   (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

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

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant

costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.