FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/LSC/2018/0344**
Property	**:**	**Northwood Hall, Hornsey Lane, London N6 5PG**
Applicant	**:**	**Bruce Maunder Taylor (as Manager) and various leaseholders of Northwood Hall who requested to be added as Applicants**
Representative	**:**	**Mr Cockburn (Counsel)**
Respondent	**:**	**The Long Leaseholders of Northwood Hall**
Representative	**:**	**Mr Wismayer (representing some of the leaseholders)**
Type of application	**:**	**Service Charges**
Tribunal member(s)	**:**	**Mr M Martyński (Tribunal Judge)** **Mr P Casey** **Mr J Francis**
Date of hearing	**:**	**22, 23 July and 4 September 2019**
Date of decision	**:**	**20 September 2019 (amended 18.10.19)**

DECISION

Decision summary

1. The tribunal determines that, in relation to the Service Charge year figures to June 2018:-

   (a) Expenditure in relation to the boiler and pump work was reasonably incurred

   (b) The order made in 2016 (and amended in 2017) for the appointment of a Manager did authorise the Manger to operate a Reserve Fund

   (c) The provision of a sum of £200,000 as a contribution to the Reserve Fund was reasonable.

   (d) The provision of a sum of £89,000 to the Reserve Fund was not in accordance with the terms of the leases

   (e) The demand for a contribution to reserves for internal decorations in the sum of £1,200,000 is reasonable

   (f) Legal fees in the sum of £56,757.14 were not reasonably incurred and are not payable by leaseholders

   (g) 'Pipe end' work - £290,735 & £17,047.20 – not reasonably incurred

   (h) Only the sum of £58,200 has been reasonably incurred in management charges

   (i) Gas supply costs amounting to £107,690 are reasonable and payable

   (j) Asbestos management costs of £2,340 have been reasonably incurred

   (k) Health and safety report costs of £1,434 have been reasonably incurred

   (l) Professional fees (Dwellant software platform) - £1,629.60 is a managing agent's overhead, not a Service Charge item

   (m) Mr Nicholson - £4,850 – reasonably incurred

Background

2. Northwood Hall ('the Block') is a six-storey purpose-built block containing 194 flats. The Block has a troubled history which has at its

heart problems concerning the renewal of the communal heating and hot water system.

3. The freehold interest and the Head Lease to the Block is held by Triplark Limited. The interests in the individual flats are held on long leases by various lessees. 30 flats are owned by Triplark.

4. These proceedings are the latest instalment of various litigation at the Block. A detailed history of the problems at this property are set out in:-

- the judgment of Mrs Recorder McGrath given in May 2019 in the County Court at Central London in Case Number D10CL409, and

- the decision of the First-tier Tribunal dated 23 February 2016 under Case Reference LON/00AP/LBC/2015/0102

5. Until 2011, the management of the Block was in the hands of Triplark. Their managing agents obtained a report on the heating and hot water system in 2009. Two new systems were identified; one involved individual systems in each flat, the other was for communal boilers.

6. Various leaseholders set up a Right to Manage Company and, with the assistance of managing agents, Canonbury Management, the RTM Company obtained the Right to Manage in January 2011. Canonbury Management started to make demands from leaseholders by way of Service Charges to a Reserve Fund to pay for the new heating system.

7. Work on a new (communal) heating and hot water system started in 2014. During 2014 there was a change to the design of the system. Essentially that change involved the installation of horizontal pipework instead of vertical pipework (the original system relied on vertical pipework). The change of design meant that an extensive system of horizonal ceiling-mounted pipework was to be installed throughout the corridors in the Block which would then have to be boxed in. The project started to run over time and over budget.

8. Mr Wismayer arrives on scene in or about December 2014 after being appointed as a consultant by the RTM directors. Mr Wismayer has extensive experience of managing flats and projects in blocks and has been for many years responsible for the management of Moreshead Mansions, a block in West London.

9. Mr Wismayer has proved to be a divisive figure. He is firmly supported by some leaseholders and bitterly opposed by others. There were various twists and turns following Mr Wismayer's appointment. He was appointed as a Director of the RTM Company and in April 2015, under his guidance, the RTM Company recommended to leaseholders that they

abandon the design change to the heating system involving horizonal piping and revert to the original design.

10. There then ensured one of the many battles which have occurred at the Block. There was a struggle for control of the management. Some RTM Directors wanted to be rid of Canonbury and to appoint Mr Wismayer to manage the Block, others opposed that change. Whilst this was going on, Mr Wismayer was attempting to become a leaseholder at the Block by purchasing one of the flats. Triplark and various lessees opposed to Mr Wismayer marshalled their forces and in July 2015, Mr Wismayer was removed as a Director of the RTM. In a side battle, Mr Wismayer's attempt to purchase a flat at the Block was the subject of litigation starting in the FTT and going all the way to the Court of Appeal.

11. The heating and hot water project continued with the changed design with the horizontal pipework in the corridors.

12. In April 2016, Triplark, supported by some leaseholders, applied for the appointment of Mr Maunder Taylor as a Manager. That application was opposed by other leaseholders who proposed Mr Wismayer as a Manager. The Tribunal appointed Mr Maunder Taylor as a Manager until September 2019.

13. Mr Maunder Taylor continued with the heating and hot water project in its amended horizontal design and proceeded to install new heating and hot water systems into the individual flats against some opposition. The demands for Service Charges and disputes over the installation of the new system led to yet further litigation, this time two actions (which were then consolidated) between Mr Maunder Taylor as Claimant and various leaseholders as Defendants and between other leaseholders as Claimants and Mr Maunder Taylor as Defendant. Those actions came to trial in the Spring of 2019 and led to the judgment of Mrs Recorder McGrath in May 2019. In summary, that judgment went against Mr Maunder Taylor in both cases including a finding that the costs of works internally in flats to install heating and hot water systems was not payable by the leaseholders by way of a Service Charge (under the terms of the leases the landlord was not entitled to carry out works internally in the flats).

14. Triplark applied to the FTT for an order extending Mr Maunder Taylor's appointment at the block. That application was supported by some leaseholders and opposed by others. The opposing leaseholders again nominated Mr Wismayer as Manager. Following the judgment of Mrs Recorder McGrath in May 2019, Triplark changed their application by proposing an alternative Manager to replace Mr Maunder Taylor. The application came to a final hearing at the FTT in August 2019 and the FTT decided not to appoint either candidate and the management therefore reverted to Triplark.

The application in these proceedings

15. In these proceedings, the Applicant, Mr Maunder Taylor, sought a declaration as the reasonableness and payability of the Service Charges for the Service Charge year to June 2018 and the proposed budget Service Charges for the Service Charge year to June 2019.

16. The application was issued in August 2018. As with previous litigation, the application was supported by some leaseholders and contested by others. Again, as with the other litigation, Mr Wismayer loomed large in the proceedings, and at the final hearing he was the spokesperson for those leaseholders who opposed the application.

17. Although the application had been made in respect of two Service Charge years, by the time the application came to be heard by the tribunal, Mr Maunder Taylor had withdrawn his application in respect of the Service Charge year ending June 2019.

The issues, the parties' arguments and the tribunal's decisions

18. The accounts for the Service Charge year ending 30 June 2018 show an expenditure of £2,027,280.56. The accounts show (amongst other things); a Reserve Fund to which contributions are made and from which payments are made; charges for legal fees and management fees.

The validity of demands

19. After discussion at the final hearing, it was accepted by the Applicant that the Service Charges for the year in question were not currently payable as they had not been properly demanded. However, the Applicant maintained that the question of the reasonableness of those Service Charges remained to be determined.

Interest

20. The Applicant has demanded interest from certain leaseholders who are in arrears of Service Charges. The Service Charge accounts have been credited with that interest as income. Mr Wismayer wanted the tribunal to make a ruling on the question of interest. He argued that, as the interest was being treated as income, it would therefore reduce the Service Charges payable and would be relevant to the payability of Service Charges.

21. Our view is that, as argued by Mr Cockburn for the Applicant, interest is an Administration Charge, accordingly it falls outside the scope of the

application before us which simply asks us to determine Service Charges. Further, given that, as recorded above, payability is not an issue for us, the question of interest charges will not arise in this application on the question of payability of Service Charges. Even if it were relevant, if we agreed with Mr Wismayer that interest is not payable, and if interest receivable could be used as an income stream, this would simply increase the amount of Service Charge payable.

Boiler maintenance costs

22. The boilers at the block were installed in 2014 (as part of the heating and hot water replacement upgrade) under a JCT Minor Works contract made in December 2013. There should have been a 'rectification' period extending from 12 months from practical completion during which time the contractor should have been responsible for any costs. Mr Wismayer estimated that, given the overrun in the contract, practical completion would have taken place in or about March 2017 meaning that the 'rectification' period would have come to an end in or about March 2018.

23. The Applicant stated that he had inherited the boilers. The only liability on the contractor who installed the boiler was for defective parts or workmanship. The situation was complicated by the fact that the boilers have had to be used to run both the new and the old heating system. Further, the costs of ongoing routine servicing would always have to be met.

24. We proceeded to look at all the invoices in question. Of the 13 invoices, Mr Wismayer conceded on five, numbers 8,9,10,12 & 13. In relation to the remainder of the invoices, we set out the parties' arguments in the following table;

Invoice number and amount	**R's objections**	**A's reply**
1 £336.00	If external, accepted as a Service Charge item; if internal it should not be a Service Charge item	This was an invoice in respect of old pipework
2 £336.00	The description appears to show that this was a problem in respect of a number of flats	The description appears to show that this was a problem in respect of a number of flats
3 £1,368.00	Any maintenance should have been covered by the	Whilst it is not clear if this is within the rectification period, the Applicant took the view that

for service contract	rectification period	the boilers were by this stage up to 3 years old and that a service contract was required to maintain service and for insurance purposes.
4 £426.00	All control gear should have been replaced in the first place	This appears to be in the boiler room. Electrical surges meant that the old equipment had to be manually re-set.
5 £780.00	This is not clear if the pump was to the new system or the old, if the new, it should be covered by the contractor	It is not clear if this was to the old or new system, as it is charged as a Service Charge, the presumption is that it is to the old system
6 £408.00	There is insufficient information to determine whether this control system was for the old or new system.	The control system on the new system automatically sets itself so the re-setting must have been in respect of the old system.
7 £1,368.00	See item 3	See item 3
11 £360.00	There is an insufficient explanation	This is in respect of the old system

25. In our view there was a sufficient explanation for all the items provided by Mr Maunder Taylor to convince us that the items in dispute were not capable of being covered by any 'rectification' period obligations on the part of the contractor or were the results of the contractor's mistakes.

Gas Upgrade

26. This is another issue intimately connected with the issue of the heating and hot water system. The new system required works to be carried out to increase the amount of gas that could be supplied to the Block by way of increasing the size of the gas supply pipe to the Block. One of the reasons for the additional gas was that, under the old heating system, the flats only had a limited number of radiators (2/3) and the landlord was

only obliged to supply a heating system during the colder months of the year. Under the new system, it was anticipated that flats would have radiators in all rooms and that heating would be available all year round – hence the need for larger amounts of gas.

27. Mr Wismayer's first point here is that the landlord had no right to install new heating apparatus into the flats (all but a few flats have had the new system installed), it follows therefore that the costs of the hardware (installed externally) to supply additional gas to heat that apparatus is not recoverable. Mr Wismayer stated that his preferred method of upgrading the heating system would have been to construct a system up to the point of entry into the flats and then leave the flat owners to install their own equipment in the flats (subject to the landlord/Manager identifying suitable recommended systems). In the hearing, Mr Wismayer conceded that the result of his plan would be that the leaseholders would inevitably install a more comprehensive set of radiators in their flats which would lead to an increase in the use of gas (and so a need for a greater capacity of gas supply to the Block).

28. Mr Wismayer's second point is that reserve funds had already been demanded and accumulated for this expenditure (of approximately £30,000). The payment should therefore come from these reserves and not be additional expenditure for the year in question. Mr Wismayer therefore alleged that the Applicant, in showing the gas upgrade as separate expenditure was double charging and described it as, rather dramatically, a 'Ponzi' scheme.

29. As explained later in this decision, it is Mr Wismayer's case that the Reserve Fund is unlawful, there being no provision for such a fund in the terms of the Respondent's leases.

30. The Applicant argued that the Reserve Fund was for expenditure that would be spread over more than one year. The cost of the gas upgrade was in one year and so therefore charged as expenditure, outside of the Reserve Fund. However, the Applicant was open to changing this position depending on the findings of the tribunal.

31. Mr Maunder Taylor reflected on his position on this issue on the evening of the first day of the hearing and the next day conceded that this expenditure should have come out of the Reserve Fund.

Reserve Fund

32. All parties agree that there is no provision for a Reserve Fund in the relevant leases. By the time that the Applicant became the Manager, a Reserve Fund was in operation and, as far as we are aware, was not questioned.

33. The parties further agreed that, when appointing a Manager, the tribunal can give to the Manager rights and powers that are over and above those reserved to the landlord in the lease in question. In this case, the Applicant asserts that the Management order made by the tribunal gives the Manager the power and authority to create/maintain a Reserve Fund and to lawfully demand contributions to it. Mr Wismayer argues that there is no such power contained in the order.

34. We start then with the relevant provisions of the Management order, made in 2016, which are as follows:-

> **Order**
>
> The Tribunal ORDERS the Manager's appointment on the following terms:
>
> 1. The appointment of the Manager, Mr Bruce Maunder Taylor, FRICS, MAE as manager (including such functions of Receiver as are specified herein) of the Premises pursuant to S.24 of the Act for a period of 3 years which shall continue until 13 September 2019 and is given for the durations of this appointment all such power and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of Triplark Limited and in particular
>
> [.....]
>
> (b) The power and duty to carry out the management functions of Triplark Limited contained in the Leases (the same having been exercisable by the RTM Company upon it acquiring the right to manage the Premises and having ceased to be exercisable by the RTM Company upon the interim management order dated 24 June 2016 taking effect) and in particular and without prejudice to the foregoing:
>
> i. the obligations to provide services;
>
> ii. the lessor's repairing and maintenance obligations; provided also that the standard of any such work shall have regard to the age, character and prospective life of the premises and the locality in which it is situated
>
> iii. a comprehensive review of the old heating and communal hot water system and equipment, the project to renew the same and the incomplete new heating and communal hot water system and equipment and the determination, following such consultation as the Manger deems appropriate and constructive, of the best means of achieving a functioning, disrepair free, heating and communal hot water system taking account of all the circumstances, including the project and running costs, performance and the appearance of the Premises.
>
> .....
>
> (j) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to their

appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987. The Manager shall as soon as and as far as is reasonably practical deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provision of the lease (if any) or to power given to him by this order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund. Nothing in this provision shall prevent the Manager applying any individual lessee's contribution to the reserve fund held from time to time to other unpaid elements of the Service Charge Contributions due from the same lessee when reasonably necessary to enable the Manger to comply with his other duties under this Order.

[.....]

2. The Manager shall manage the Premises in accordance with:

(a) All statutory requirements;

(b) The Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;

(c) the respective obligation of all parties – landlord and tenant -under the Leases and Transfers and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and

[.....]

SCHEDULE

FUNCTIONS AND SERVICES

[.....]

3. Maintain the existing reserve funds and continue with prudent provision for the same

35. The Applicant argued, that on a proper reading of the relevant parts of the Manager order, there was provision for a Reserve Fund.

36. Mr Wismayer argued that the Management order was made on the mistaken assumption that the lease contained provision for a Reserve Fund; terms cannot be implied in to the Management order, the Manager was bound by it. If in any doubt, the Manager could apply to vary the terms of the Management order.

37. Reference was made to the judgment of Mrs Recorder McGrath where, at paragraph 135, she found that certain demands for Service Charges made by the Applicant were not valid. The Judge listed her reasons in reaching that conclusion, the last of them being;

> Furthermore, and separately, the invoices include a demand for a contribution to a reserve fund. This cannot be correct where the lease makes no provision for the collection of such a fund.

38. It was said that, when she handed down her judgment, the Recorder stated that she had not been asked to consider the effect of the Management order on the terms of the lease and that she was not going to determine that question.

39. It was pointed out that Mrs Recorder McGrath did however deal with another aspect of the Management order in her decision and made a ruling on the extent of the order in relation to that issue. This concerned the provision in the order under paragraph 1.(b) iii. [set out above]. In her judgement, the Judge commented as follows in relation to that part of the order:-

> In my view the starting point must be the terms upon which Mr Maunder Taylor was appointed as manager. I consider that it is clear from the terms of the order and supported by its narrative decision that the Tribunal required Mr Maunder Taylor to stand back, to take appropriate advice and to come to a decision how best to proceed with the heating and hot water Project. I do not accept that the order gave the Manager a mandate to proceed with the project without any regard to the terms of the leases themselves.

40. We conclude that the Manager order did make provision for a Reserve Fund. It is clear from the wording of the order that it was presumed that; (a) there was a provision in the lease for a Reserve Fund, and; (b) that a Reserve Fund was going to be used as a mechanism to pay for the various works that were needed at the Block.

41. There is no suggestion that the issue of there not being power to operate a Reserve Fund under the leases was raised at the hearing. Further, there is no suggestion that anyone at that stage had objected to the fact that a Reserve Fund had been created and was being managed and added to despite that fact that there was no power to do so under the lease.

42. The management order, at section 2 (which in our view sets out the scope of the powers of the Manager), obliges the Manager to manage 'in accordance with the Schedule of Functions and Services'. That schedule, in unequivocal terms, states that the Manager is not only to maintain the existing reserves, but is to carry on making provision for the same. It cannot have been plainer that the intention of the order was to allow the Manager to operate a Reserve Fund.

43. As to Recorder McGrath's finding in relation to paragraph 1.(b) iii. of the Manager order, that is not a finding that is relevant to the issue before us. It concerns a different part of the order and a different point.

Reserve fund for the year - £200,000:

44. Mr Wismayer argued that, even if there is a power to operate a Reserve Fund, there is no explanation for the sum specified. The balance sheet shows £2.9 million in reserves at this point. The real reason for this demand is to cover the fact that the Applicant is running out of cash and needs to boost the cash flow.

45. The Applicant argued that it was, in any event, prudent to make a provision for the Reserve Fund each year. As to why the figure should have been £200,000 and not any other figure, Mr Maunder Taylor explained that the long-term expenditure on the Block was not only concerned with the heating and hot water system, there were decorations and roof repairs, rainwater pipes, lighting decorating and carpets – the total costs were in the region of £5 million.

46. Mr Wismayer countered that the Reserve Fund provisions must have some regard to when the works were to be carried out; so far, the Applicant had not carried out long-term maintenance works in the three years of his managership. Further, in a previous hearing, one of the leaseholders who is a supporter of the Applicant stated that the money was needed for the corridor works and because of the arrears that were accruing in the non-payment of Service Charges.

47. We accept Mr Maunder-Taylor's explanation for the amount of the contribution towards a Reserve Fund. Given the size of the Block and the amount of work to be done over the forthcoming years, the sum of £200,00 appears to us to be prudent and reasonable.

Reserve fund – additional contribution for the year - £89,000:

48. This sum appears to be the surplus of Service Charges over actual expenditure which is being put into the Reserve. The parties agreed that if the allowance for interest on arrears is taken out the income, then this surplus is reduced by £55,000.

49. Mr Wismayer referred to the terms of the leases in the Block. Clause 4.(2)(c) of the leases requires that if there is a surplus of Service Charge paid on account over actual expenditure, then that surplus goes to credit the leaseholder's account for the following year – it cannot be put into reserves.

50. The Applicant agreed with Mr Wismayer's interpretation of the lease, however, he argued that the Manager order, at paragraph 3 [set out above] of the schedule to that order, allowed him to override this provision in the lease.

51. In our view, there is no doubt from the terms of the leases in the Block that, a surplus in payments towards the anticipated Service Charge costs over actual expenditure in a Service Charge year, must go to the credit of the leaseholder's account for the following year. The leases are clear on this point. Conversely, the Management order contains no specific reference to the alteration of the leases to allow this surplus to be allocated to reserves. It is not possible to construe the Management order in this way. The order simply makes provision for a Reserve Fund, beyond this, the order obliges the Manager to manage in accordance with the terms of the leases (see paragraph 2.(c) of the Management order).

Reserve fund – contribution to internal decorations - £1,200,000:

52. Mr Wismayer argued that there is no prospect of this work being carried out in the foreseeable future; this sum has appeared out of the blue and was never in any budget. Further, the money is partly for the creation of false ceilings to box in the horizontal piping to a heating and hot water system that is 'illegal' (in the sense that it involved the landlord undertaking works within flats which is it not entitled to do under the leases). Further, the Management order allows for additional demands payable on quarter days and such demands could have been used rather than an annual contribution to reserves.

53. The Applicant explained that these are fire-works. The doors to each flat are not fire proof; The corridors need additional doors due to their length for reasons of fire safety; new lighting needs to be installed as does new carpets; false ceilings have to be erected. There have been meetings with leaseholders regarding these works and there has been S.20 consultation in respect of these works. The works have been tendered and are ready to start. There is a need to make prudent provision for these works which will eventually have to be done. Demanding these sums quarterly would not build up the necessary funds quickly enough.

54. We accept Mr Maunder Taylor's explanation in relation to this sum and we accept that the sum allowed is a prudent provision for this sum. Further, we agree with Mr Maunder Taylor that demanding this sum by way of a contribution to reserves is preferable to making a quarterly demand for the reasons given by him.

Reserve fund expenditure

55. Before going on to deal with the actual expenditure challenged, we should record that Mr Wismayer had wished to challenge other expenditure in this category. The reason he did not challenge this other expenditure was that he was of the view that as the reserve monies had been demanded in previous years, he could not challenge the actual expenditure of that money in later years. We did not agree with such a narrow interpretation of S.27A Landlord and Tenant Act 1985.

'Pipe end' work - £290,735 & £17,047.20

56. Contractors had carried out work creating entrances for the pipe work from the communal heating and hot water system in the corridor into each flat. Once that work had been carried out, it was discovered that these entrances were in the wrong place to properly match up with the pipe work that was to be put into each flat for the new internal system. It was submitted on behalf of Mr Maunder Taylor that he had gone back to the contractors regarding the issue and the contractors insisted that they had done nothing wrong.

57. Mr Wismayer argued that; first, the mistake should not have been made in the first place; with reasonable diligence, the correct entrance point should have been located at the outset when work was being carried out to a 'test' flat. Second, if the entrances were not in the correct location, the work was not reasonably done. If the work was not reasonably done, payment should not have been made. Third, Recorder McGrath has found there was no valid statutory consultation carried out in respect of the works on the horizontal scheme and that leaseholder's liability for such works was limited to £250.00.

58. It seems to us that, absent any credible explanation regarding the mistake and absent any detailed submission concerning efforts to pursue the contractors in respect of the mistake, the work was plainly not reasonably done and the cost not reasonably incurred. Further, it would appear that these works are part and parcel of the horizontal design works in respect of which there was no sufficient statutory consultation. As dispensation in respect of those works has been applied for and refused, the leaseholder's liability is restricted to £250. The result is therefore that these costs were not reasonably incurred.

Legal fees

59. There is no detailed breakdown of these fees which amount in total to £56,757.14. We were however told that these relate to the consolidated proceedings before Mrs Recorder McGrath.

60. Recorder McGrath made an order pursuant to S.20C Landlord and Tenant Act 1985 prohibiting the Manager from charging those fees to the 31 flats involved in those proceedings. However, that S.20C order does not cover the other leaseholders (although there is an application from others not involved directly in those proceedings for a S.20C order in relation to those costs – yet to be determined).

61. Mr Wismayer argued that, as the Applicant had lost in those proceedings – (he has been ordered to pay the costs of all but the S.20ZA Landlord and Tenant Act 1985 applications) – and as the participating

leaseholders in those proceedings have had the benefit of a S.20C order, the costs are plainly unreasonably incurred.

62. For the Applicant, Mr Cockburn argued that the costs were reasonably incurred in the course of the Manager trying to resolve the heating and hot water project and pointed out that the Manager order contained an indemnity for costs reasonably incurred and for any adverse costs order.

63. He further pointed out that Recorder McGrath, when making the S.20C order made it clear that, as to the leaseholders not involved in those proceedings, the indemnity clause in the Management order continued to have effect.

64. Mr Cockburn argued that, in any event, the costs were reasonably incurred despite the fact that the Applicant effectively lost the litigation. He argued that the Applicant had believed that he was complying with the Management order in taking the heating and hot water system forward and further, he had the support of a great many leaseholders at the building.

65. Finally, Mr Cockburn referred to Mr Wismayer's statement that if the Applicant was appointed as Manager, there would be a 'blizzard of litigation' – litigation was therefore inevitable if the Applicant were to proceed with the managership.

66. Given the findings of Recorder McGrath, and given her order in relation to costs, it would be perverse to allow the Applicant to recover the costs of the litigation by way of a Service Charge payable by other leaseholders. The judgment of Recorder McGrath, in general, is clearly that Mr Maunder Taylor acted unreasonably and beyond the terms of the Manager order in circumstances where it was possible for him to act lawfully (including making an application to the tribunal for specific directions).

67. In the consolidated proceedings, Recorder McGrath only ordered Mr Maunder Taylor to pay 90% of the leaseholders' costs, the other 10% being incurred, in her judgment, in respect of the costs of the dispensation applications which fell into the (no costs) remit of the FTT. However, the Judge went on to clearly make an order under s.20C Landlord and Tenant Act 1985 in respect of *all* of Mr Maunder Taylor's costs including of the dispensation actions. In those circumstances, it is difficult to see how we could find that those costs were reasonably incurred.

Management charges - £69,840

68. Mr Wismayer of course relied on the result of the litigation in the County Court at Central London in his criticisms of the management. However,

he also alleged that the Applicant had failed to issue valid demands for Service Charges and had failed to carry out works of repair.

69. The Applicant's system of single entry accounting was also criticised by Mr Wismayer, that system, he argued, made finding and analysing information more difficult and therefore made management more difficult.

70. As to the accounting system, the Applicant stated that he used a recognised accounting package that was adequate for the job and that it contained reporting and analysis tools that Mr Wismayer may not be aware of.

71. Further, the Applicant stated that Block was being maintained at a basic level, for example, the gardening was being done, the insurance was being maintained. The Applicant agreed that demands for service charges were not valid but he was going to make good on this at his own cost.

72. The management fees charged by the Applicant are equivalent to £360 per flat per annum. Whilst that fee is relatively modest in terms of each flat, given the large number of flats in the Block, the total sum receivable by the Applicant's company is substantial.

73. The Applicant's company have made important mistakes in the management of the Block including the failure to make valid demands for Service Charges from leaseholders. Whilst it is true that there has been, to an extent, a basic management of the block, there have been serious failings and to mark that we find that the only the amount of £300 per flat (£250 plus VAT) has been reasonably incurred in management charges. This reduces the sum claimed to £58,200.

Gas supply costs - £107,690

74. The challenge in respect of this item concerns the increase in gas supply costs. Mr Wismayer contented that costs had increased in the approximate sum of £35,000 – there was no precise quantification of this sum.

75. The Applicant argued that the increase in costs was due to:
(a) The flats now getting full central heating
(b) The flats now getting heating supplied year-round as opposed to only for seven months of the year
(c) The fact that both the old and the new heating and hot water systems had to be maintained during the period in question.

76. The Applicant pointed out that, under the terms of the leases, the landlord has an obligation to supply heating to whatever radiators there were in any flat at any given time [clause 5(7) of the leases].

77. Furthermore, the Applicant pointed out, the leaseholders have had the benefit of the increased use in gas.

78. Mr Wismayer argued that, as the new scheme of heating and hot water was unlawful (the Applicant had no right to enter flats and install the new systems to the flats), the increased costs of the provision of heating and hot water to those systems was irrecoverable.

79. In addition, Mr Wismayer referred to the fact that the common parts of the building are now being heated 24/7 to an uncomfortable degree. This is as a result of the change to the horizontal heating and hot water system. That system uses pipes carrying hot water along the length of communal corridors. Those pipes generate heat and heat the common parts to an unnecessary and uncomfortable temperature. This must result in an unnecessary use of additional gas.

80. We conclude that the costs of gas supply have been reasonably incurred. There is no doubt that there is an increased use of gas as a result of the new heating and hot water system. However, the landlord is obliged to supply gas to whatever radiators are in the flats; further, the landlord is obliged, as a minimum, to provide heating during 7 months of the year, there is nothing in the lease terms to prevent the landlord going beyond that minimum and in the modern day and age, it would be remarkable if a landlord refused to go beyond that minimum.

81. The fact that the landlord had no entitlement to enter the flats and put in new heating and hot water systems and had no entitlement to charge leaseholders for those new systems does not mean that it cannot charge for the gas supplied to those systems which is of course being used by the leaseholders.

82. We conclude that the most likely causes of the increase in consumption of gas are those identified by the Applicant. In the absence of expert evidence, it is impossible for us to determine whether the current horizontal system of pipework is unnecessarily increasing gas consumption. As was pointed out by Counsel for the Applicant, the old system used two pipes to supply heating and hot water and the current system only uses one, this may in fact be more efficient that the old system – in the absence of expert evidence, there is no way to determine this issue.

Asbestos management costs - £2,340

83. Given the amount involved – approximately £12 per flat, we were reluctant to spend too much time on this issue.

84. Mr Wismayer argued that the investigation of asbestos was simply not done properly. He referred to the misleading information that was given regarding asbestos which led to the change of the heating and hot water system to the horizontal scheme. He then pointed out that the extensive floor ducts in the Block were not inspected for asbestos during Mr Maunder Taylor's tenure.

85. Our conclusion on this matter is that, whilst it is arguable that there was a failure on the Applicant's part to properly investigate the issue of asbestos throughout the building, the costs that were incurred were not, in themselves unreasonable. Mr Wismayer's argument is that the investigation should have been more extensive than it was and that *further* costs should have been incurred in the exercise. Accordingly, we find that these costs have been reasonably incurred.

Health and safety costs - £1,434

86. Again, given the amount involved – approximately £7 per flat, we were reluctant to spend too much time on this issue.

87. We are content that given the limited nature of the report, and the limited cost, the report was of some use and accordingly the costs of it are reasonable and payable.

'*Dwellant*'- *£1,629.60*

88. These fees, incurred by the managing agents, include a subscription to a web platform called 'Dwellant'. We were told that it is a platform used by managing agents to better communicate with leaseholders. For example, it allows the easy uploading of documents. The Applicant told us that this platform was used for some of its more complex buildings.

89. Mr Wismayer's argument, with which we agree, is that this platform is essentially an office tool, like any other, allowing the managing agent to perform its functions more efficiently. It is therefore an overhead and not a Service Charge expenditure item.

Mr Nicholson - £4,850

90. These are consultancy fees paid to Mr Nicholson who carried out, what appears to us from the documents we have seen, to be a fairly substantial design brief for the corridors in the block.

91. Mr Wismayer objected to these fees as they included works to 'box in' the controversial horizontal pipes travelling along the corridor.

92. We consider that the work was reasonably requested and is payable. Clearly much of the design work is uncontroversial. One of the legitimate options open to Mr Maunder Taylor was of course, having stood back and considered the options, to see if the current heating and hot water design could proceed. Therefore, including the boxing-in of the pipes was a legitimate consideration.

Costs and fees

93. If any party wishes to make an application regarding costs or fees in this matter, that application should be made no later than 28 days from the date of this decision.

Name:	**Deputy Regional Tribunal Judge Martyński**	**Date: 20 September 2019 (& amended 18.10.19)**

Rights of appeal

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

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

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

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

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

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