FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2018/0044**
Property	**:**	**Flat 19, 11-20 Southwold Mansions, Widley Road, London W9 2LE**
Applicant	**:**	**Mr Joe Sykes**
Representative	**:**	**In person**
Respondent	**:**	**11-20 Southwold Mansions Limited**
Representative	**:**	**Mr Niraj Modha (Counsel) instructed by Emms Gilmore Liberson Solicitors**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Mr J P Donegan (Tribunal Judge)** **Mr A Harris FRICS (Valuer Member)** **Mr L Packer (Lay Member)**
Date and venue of Hearing	**:**	**14 June 2018** **10 Alfred Place, London WC1E 7LR**
Date of Original Decision	**:**	**02 July 2018**

DECISION

Decisions of the Tribunal

(a) The Tribunal makes the determinations set out at paragraphs 50 and 76 of this decision.

(b) The Tribunal does not make orders for the limitation of the respondent's costs of these proceedings, pursuant to section 20C of the Landlord and Tenant Act 1985 ('The 1985 Act') and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').

(c) The Tribunal does not make an order for a refund of Tribunal fees paid by the applicant.

The Current Application and procedural history

1. The applicant is the long leaseholder of Flat 19, 11-20 Southwold Mansions, Widley Road, London W9 2LE ('the Flat'). The respondent is the freeholder of 11-20 Southwold Road ('the Block'), which is a terraced, mansion block containing 10 flats.

2. The Applicant seeks a determination pursuant to section 27A of the 1985 Act of advance service charges and reserve fund contributions for the year ended 24 December 2017 and for the year ending 24 December 2018. He also seeks orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act and a refund of his Tribunal fees.

3. There have been four sets of previous tribunal proceedings concerning the service charges for the Flat. The First Application (reference LON/00BK/LSC/2011/0182) was decided by the Leasehold Valuation Tribunal ('LVT'), as it then was, on 28 September 2011. The LVT disallowed management fees for the years 2004/05-2009/10, as the service charge accounts had not been certified in accordance with the lease provisions. The LVT also made a section 20C order.

4. The Second Application (reference LON/00BK/LSC/2013/0216) was decided by the First-tier Tribunal ('F-tT') on 14 November 2013 and reviewed on 07 March 2014. The F-tT determined that all of the disputed service charges were payable and refused to make a section 20C order.

5. The Third Application (reference LON/00BK/LSC/2015/0162 & 186) was decided by the F-tT on 08 October 2015 and reviewed on 07 January 2016. Again, the F-tT decided that all of the disputed service charges were payable and refused to make a section 20C order. The largest item in dispute was the cost of planned major works to the front elevation and internal common parts at the Block. The former managing agents, Residential Facilities Management Limited ('RFML') consulted the leaseholders in 2014/15, in accordance with

section 20 of the 1985 Act and the lowest tenders were from Rosewood Limited ('Rosewood'). These came in at £49,040 for the external works and £59,900 for the internal works (excluding VAT). RFML accepted the tenders but the works have not been undertaken due, at least in part, to insufficient service charge funds.

6. At paragraph 75 of the reviewed decision, the F-tT concluded *"…if Service Charges for the external and internal major works are incurred in accordance with the tender for those works submitted by Rosewood Limited, a Service Charge would be payable by the Leaseholders in respect of those works. This is of course subject to the right of any leaseholder to challenge the costs if the works are not carried out to a reasonable standard or if some or all of the necessary work is not done. Further, this is subject to the fact that there has now been some delay between the successful tender being submitted and the instruction to carry out the works. The tender figures may now be out of date. This decision can only deal with the tender figures as they stand, not higher figures."*

7. The Rosewood tenders did increase and the amount of the increase formed part of the Fourth Application (reference LON/00BK/LSC/2016/0097). This was withdrawn on 16 September 2018, pursuant to a written agreement of the same date. Paragraph 2 of the agreement provided:

"Mr J Sykes agrees to the proposed scope and cost of the works and will pay the costs of the major works to the front elevation and Internal Common Parts. Payments to be made in 12 equal monthly instalments totalling £15,441.00. Any Excess or surplus to the costs of the works are to be dealt with in the year end accounts as set out in the lease. For the avoidance of doubt any surplus will be repaid to lessees when the audited accounts are available."

8. RFML's management of the Block ended in December 2017. Burlington Estates Limited ('Burlington') was appointed as the new managing agents on 01 January 2017, for a term of 12 months from 04 January.

9. The Current Application was received by the Tribunal on 30 January 2018. Directions were issued on 12 February 2018 and the case was listed for hearing on 14 June 2018. Paragraph 2 of the directions required the applicant to serve a detailed statement of case with copies of supporting documents and any witness statements by 29 March 2018. Paragraph 3 required the respondent to serve its statement of case, documents and witness statements by 27 April 2018 with any reply to be served by 17 May. Paragraphs 6 and 7 provided:

> *"6. The applicant lessee shall be responsible for preparing the bundle of relevant documents (in a file, with index and page numbers) and shall by **18 May 2018** send **one** copy to the landlord and send **four** copies to the tribunal.*

*7. If the parties are unable to agree a single bundle then each party shall send **two** copies of their own bundle (filed, with index and page numbers) to the other party with **four** copies to the tribunal by **18 May 2018**."*

10. In an email to the Tribunal dated 12 April 2018, the applicant requested a retrospective extension for service of his statement of case. The 29 March deadline was extended to 16 April with consequential extensions to the subsequent directions. The deadlines at paragraphs 6 and 7 were each put back to 29 May 2018.

11. On 21 May 2018 the applicant submitted a separate application for the appointment of a Manager for the Block, under section 24 of the Landlord and Tenant Act 1987. In his covering letter, the applicant requested a postponement of the hearing on 14 June 2018, so both applications could be heard together. The Tribunal replied on 31 May, refusing the postponement. The section 24 application was returned, as it was incomplete.

12. The parties failed to agree joint hearing bundles and the Tribunal received the respondent's bundles on 29 May 2018, in accordance with the extended directions. The applicant's bundle was not received by the Tribunal until 12 June 2018, two days before the hearing.

13. The relevant legal provisions are set out in the appendix to this decision and the relevant lease provisions are set out at paragraphs 14-20 below.

The lease

14. The lease was granted by Lytton Grove Properties Limited ('LGPL') ("*Landlord*") to the applicant ("*Tenant*") on 15 December 2003, for a term of 125 years from 25 December 2002. The respondent is the successor in title to LGPL.

15. Various definitions are at clause 1 of the lease, including:

*"**Accounting Date***	*the 25th day of December in each year*
Accounting Period	*the period commencing on the day immediately after each Accounting Date and ending on the following Accounting Date*
…	
Service Charge	*the Tenant's Proportion of the amount of Service Costs for each Accounting Period*
Service Costs	*the amounts specified in part 2 of Schedule 5"*

16. The Tenant's Proportion, as set out at paragraph 8 of the Particulars, is 10%.

17. Detailed service charge provisions are to be found in the fifth schedule, including the following definitions at paragraph 2:

*"**Accountant:***	*an accountant or firm of accountants who shall be qualified as specified in s28 of the Landlord and Tenant Act 1984*
Certificate:	*a certificate issued under the provisions of paragraph 5*
Estimate:	*An estimate prepared under the provisions of paragraph 3.1 of this schedule*
…	
Payment Days:	*25th December and 24th June*
Reserve Fund:	*a fund that the Landlord may decide to establish in order to meet future expenditure which it expects to incur in maintaining replacing rebuilding or renewing those items which it is obliged or entitled to maintain replace rebuild or renew under the terms of this lease"*

18. The advance service charges are dealt with at paragraphs 3 and 4, which include the following provisions:

*"**3. Preparation of the Estimate***

3.1 On or before (or if that shall be impractical, as soon as practicable after) each Accounting Date the Landlord shall prepare an Estimate in writing of the Service Costs which it expects to incur or charge during or in respect of the Accounting Period commencing immediately after that Accounting Date

3.2 The Estimate shall contain a summary of those estimated Service Costs

3.3 Within 14 days after preparation, a copy of each Estimate shall be served by the Landlord on the Tenant together with a statement showing the Interim Charge payable by the Tenant on account of those estimated Service Costs

4. Payment of Interim Charge

4.1 The Interim Charge for each Accounting Period (together with VAT, if payable) shall be paid by the Tenant by two equal instalments on the Payment Days during that Accounting Period

…

4.3 If the Interim Charge for any Accounting Period is not ascertained and notified to the Tenant by the first Payment Day in that Accounting Period:

4.3.1 until the Payment Day following the ascertainment and notification to him of the new Interim Charge, the Tenant shall pay on account a provisional interim charge at the rate previously payable

4.3.2 commencing on that Payment Day, the Tenant shall pay the new Interim Charge

4.3.3 on that Payment Day, the Tenant shall also pay the amount by which the new Interim Charge for the period since the commencement of that Accounting Period exceeds the new Interim Charge for that period, the Company shall give credit for the overpayment

19. The end of year service charge provisions are at paragraph 5 and include:

"5.1 The Landlord or its managing agents shall keep proper books and records of the Service Costs and as soon as practicable after each Accounting Date the Landlord or its managing agents shall prepare a certificate of the Service Costs of the Accounting Period ending on that Accounting Date

…

5.4 The Certificate shall be signed by an Accountant and shall include a certificate by the Accountant that the summary of Service Costs set out in the Certificate is a fair summary and that the Service Costs are sufficiently supported by accounts, receipts and other documents which have been produced to the Accountant"

20. The "*Basic Service Costs*" are listed at paragraph 7, which includes the following:

"7.5 If the Landlord decides to establish a Reserve Fund, the Service Costs shall also include such sum as the Landlord may from time to time require to put into the Reserve Fund"

The hearing

21. The hearing took place on 14 June 2018. The applicant appeared in person. However, it is worth noting that he works as an advocate for Fleet Street Advocates Limited. During the course of the hearing he referred to his extensive professional experience of appearing in other courts and tribunals. Mr Modha appeared on behalf of the respondent company and was accompanied by a director of this company, Mr Simon Hutton and Ms Rachael Clifford of Burlington.

22. The Tribunal members were each supplied with three hearing bundles; one from the applicant and two from the respondent. The respondent's bundles had been circulated well in advance of the hearing, giving the members an opportunity to read the contents.

23. On the morning of the hearing, the Tribunal members each received the applicant's bundle, a witness statement from the applicant dated 12 June 2018, a list of trial issues and chronology from the applicant, skeleton arguments from both parties and additional correspondence and documents filed by the respondent's solicitors. The hearing was scheduled to start at 10am but did not commence until 10.30am, due to the late production of these documents. The applicant asked for additional time to consider the respondent's skeleton argument, which was refused. However, the Judge explained that the Tribunal would first hear submissions on the admissibility of his bundle. There would then be a short adjournment for the members to decide this issue, which would also give the applicant an opportunity to study the respondent's skeleton argument at greater length.

24. The applicant's bundle ran to 315 pages and duplicated some of the documents in the respondent's bundles. It also included a reply to the respondent's statement of case and correspondence passing between the applicant and RFML, and the applicant and Burlington.

25. The applicant apologised for the late production of his bundle and explained that he had always intended to produce joint bundles. The respondent's solicitors "*suddenly announced*" they would produce their own bundles, which he then had to consider and work out what was missing. This took some time, as the email correspondence went back 18 months and, combined with his work commitments accounted for the delay.

26. The applicant asked the Tribunal to admit his bundle and his witness statement. The statement had been produced to address new issues raised by the respondent, to explain his case and to narrow the issues.

27. Mr Modha objected to the late production of the bundle and statement on two grounds; there was no good reason for the delay and the additional documents in the bundle would not assist the Tribunal. His instructing solicitors supplied the applicant with electronic copies of the respondent's documents and a draft

bundle index, by email, on 18 May. Hard copies were also sent by post. The applicant failed to agree the bundle and the respondent's solicitors prepared their own, to comply with the 29 May deadline.

28. The respondent's solicitors received the applicant's bundle in two tranches, with the first part not delivered until 08 June 2018. The applicant's statement should have been served with his statement of case (by 16 April) but had only been received on 12 June.

29. The Judge asked the applicant to identify the outstanding issues, so it could assess the relevance of his bundle. In his statement of case, the applicant listed 8 "*orders*" that he was seeking, numbered 16.1, 16.2, 17.1, 17.2, 17.3, 18.1, 19.1 and 20.1. The Judge explained that the Tribunal could only make determinations of payability, rather than orders. He then took the applicant through the list and five 'live' issues (excluding costs) were agreed, namely:

    (a) Whether the Interim Charges for the year ended 24 December 2017 are payable;

    (b) Whether the Interim Charges for the year ending 25 Decmber 2018 are payable;

    (c) Whether a Reserve Fund contribution of £11,363.57, demanded on 09 February 2016, is payable;

    (d) Whether the Reserve Fund Contribution of £2,500 for June to December 2017 is payable; and

    (e) Whether the Reserve Fund Contributions of £2,500 for December 2017 to June 2018 is payable.

30. The Tribunal then adjourned to decide the preliminary issue. On resuming the hearing, the Judge informed the parties that the applicant's bundle and statement would be admitted. However, the Tribunal would only consider documents relevant to the five live issues. The Judge also commented that the respondent's solicitors had acted reasonably in first seeking to agree the bundle index with the applicant and then, in the absence of agreement, producing their own bundles.

31. The Tribunal then proceeded with the hearing. The applicant spoke on the points raised in his statement of case, reply and witness statement. The Tribunal also heard oral evidence from Ms Clifford, who spoke on the witness statement dated 11 May 2018. She is employed by Burlington as a property manager and has managed the Block since May 2017. Following her evidence, Mr Modha and the applicant made brief closing submissions.

32. During the course of the hearing, Mr Modha also asked the Tribunal to admit three emails. The first was sent by the leaseholder of Flat 20, Mr Philip Renshaw to the other leaseholders on 02 November 2016. The second was a short reply from the applicant of the same date and the third was addressed to Ms Clifford, Mr Hutton and the respondent's solicitor and dated 01 June 2018. The latter was apparently sent on behalf of the other 9 leaseholders but the sender's email address had been obscured. Mr Modha's request was opposed by the applicant, who questioned the relevance of the emails. He particularly objected to the 01 June email, as this had been anonymised and was not signed.

33. After a further short adjournment the Tribunal informed the parties that it would admit the two emails dated 02 November 2016, which were clearly relevant to the live issues (see paragraphs 72 and 73 below), but not the email of 01 June 2018.

34. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made the following determinations.

Interim Charges 2016/17 and 2017/18

35. The disputed Interim Charges are:

25 December 2016 - 23 June 2017	£897.37
24 June – 24 December 2017	£897.37
25 December 2017 – 23 June 2018	£1,098.30

36. On page 10 of the Current Application form, the applicant described three questions that he wanted the Tribunal to decide. The first was:

"1. Is the freeholder and it agent in breach of the lease in demanding service charges without serving either Interim or Final Service Charge accounts, self-certifying their own budget despite a previous RPT ruling against this, and charging far in excess of the 10% for Management fees permitted by the lease?"

37. The applicant withdrew his earlier suggestion that the management fee was subject to a 10% limit in his reply.

38. In his statement of case, the applicant complained that no interim or final service charge accounts had been served for 2017 and 2018 and there were no certified accounts for these years. He also complained that no service charge demands had been issued until early 2018. By the hearing date the he had abandoned his arguments over the accounts. This is unsurprising, given that the disputed service charges are Interim Charges (as defined in the lease), rather than end of year balancing charges. The lease requirements for Accounts and Certificates only apply to balancing charges. The 2016/17 end of year

accounts were produced shortly before the hearing. The 2017/18 accounts cannot be produced until the end of the financial year.

39. On the late service point, the applicant said he first received the demands in January 2018 and did not receive the Estimates until after these proceedings commenced. He received a service charge statement from Ms Clifford on 31 October 2017, showing substantial arrears. This provoked a flurry of correspondence, in which he complained that no demands had been served.

40. In a letter dated 30 November 2017 the applicant stated "*..the writer has not received a single interim or final service account or estimate thereof for 2017.*" He enclosed two cheques with that letter; one for the ground rent and the second being "*A sum on account of service charges, as advised in the last two weeks, said to run from 25.12.16-23.6.17, in the sum of £897.37.*"

41. The applicant subsequently invoked Burlington's internal complaints procedure and Ms Clifford responded to his complaint in a letter dated 12 January 2018. This was sent by email and recorded delivery and attached various documents, including copies of the 2016/17 and 2017/18 demands. The applicant then made a further payment under cover of a letter dated 29 January, in which he wrote:

"With reference to the above property please find attached cheques for two 'draft' service charges dated 13th and 18th December 2017 respectively but served by post only under cover of a letter dated 12th January 2018, served on 16th January 2018:

1. *Half-yearly service charge for the period 24th June-24th December 2017.*

2. *Half-yearly service charge for the period 25th December 2017-23rd June 2018.*

These payments are only to be allocated to service charges for these periods. They are paid without prejudice to the lessee's concerns about breaches of the lease."

42. On questioning from the Tribunal, the applicant accepted he now had copies of the 2016/17 Estimate and the April and June 2017 demands. He agreed the expenditure proposed in the Estimate, totalling £17,950 and acknowledged that he was liable to pay 10% of this sum (£1,795). He paid the April demand on 30 November 2017 and the June demand on 28 January 2018, so the 2016/17 Interim Charges have been paid in full.

43. The applicant also accepted that he now had the 2017/18 Estimate and the December 2017 demand. Again, the applicant agreed the expenditure proposed in the Estimate (£21,966) and that he was liable to pay 10% of this sum. He paid the December demand on 29 January 2018.

44. Copies of the Interim Charge demands were included in the applicant's bundles and were dated 03 April, 20 June and 18 December 2017. Ms Clifford stated that the April demand had been sent to the applicant with the 2016/17 Estimate, in April 2017. This was accompanied by a letter from her colleague, Shauna Rubins. The copy Estimate in the applicant's bundles was dated 10 May 2018 but Ms Clifford explained this was the date it had been reprinted for her witness statement; rather than the date of sending. In response to a question from the Tribunal, she confirmed dates are set by the system and she could not alter them. She advised there had been a delay in sending out the Estimate and demand, which should have been issued in December 2016, due to the change of managing agents. Ms Clifford stated that the figures in the Estimate were taken from the previous year's Estimate, prepared by RFML.

45. A copy of Ms Rubins' letter was also in the applicant's bundles. This was undated and was headed "*Re: 11-20 Southwold Mansions – Budget for the Year End 24 December 2017*". The second paragraph read:

> ***"Tenant Statement***
>
> *Please read this thoroughly and contact us in the event that there are any discrepancies. Should there be an outstanding balance on your account you will find a demand enclosed."*

46. Ms Clifford stated that the June and December demands were sent in those months and the 2017/18 Estimate was sent in December 2017. She explained that service charge demands are automatically generated by Burlington's case management system and are normally sent to leaseholders by regular post (not recorded or special delivery). In the applicant's case, the demands were sent to his business address at 107 Fleet Street, London EC4A 2AB. Burlington does not keep hard copies of the demands or any record of posting, such as file notes. No other leaseholders at the Block had complained of missing demands or Estimates.

47. Ms Clifford rejected the applicant's suggestion that the demands were first sent to him on 12 January 2018. The original demands had been sent in April and June 2017 and she arranged for a colleague to send copies in November 2017. Ms Clifford then sent further copies to the applicant with her letter of 12 January 2018.

48. Mr Modha submitted that the Tribunal should prefer Ms Clifford's evidence on the service of the demands and Estimates. The applicant may have confused or misunderstood the status of these documents, as he had been under the misapprehension that certified accounts were required for Interim Charges. Mr Modha also relied on the payments made by the applicant, as evidence that demands had been served. At the very latest, the applicant had received copies of the demands in January 2018, before the proceedings commenced.

49. The applicant submitted there was no evidence the demands and Estimates had been sent to him. This was a mere assertion on the part of Ms Clifford and was not supported by any file notes or record of posting. Further the applicant had made repeated written complaints about the missing demands.

The Tribunal's decision

50. The Tribunal determines that the following Interim Charges are payable by the Applicant:

25 December 2016 - 23 June 2017 £897.37

24 June – 24 December 2017 £897.37

25 December 2017 – 23 June 2018 £1,098.30

Reasons for the Tribunal's decision

51. The Interim Charges were agreed by the applicant during the course of the hearing and have been paid. The only dispute was when the charges were demanded.

52. The Tribunal accepts Ms Clifford's evidence that the 2016/17 Estimate and April 2017 demand were sent to the applicant in April 2017, the June 2017 demand was sent to him in June 2017 and the 2017/18 Estimate and December 2017 were sent in December 2017. The applicant says he did not receive them and there is no proof of delivery.

53. It is very unlikely that all of the original demands and Estimates went astray in the post and there was no suggestion they were incorrectly addressed. However, it is unnecessary for the Tribunal to decide if they were validly served. This is because the applicant had received copies of these documents by the time of the hearing and expressly agreed the Interim Charges, which he had paid some months earlier. The lease does not make time of the essence, so late delivery of the demands or Estimates would not affect his obligation to pay. The Interim Charges became payable once the applicant received the original documents, or copies. At the very latest, he received copies of the demands by 16 January 2018. Further he must have received at least one Estimate (if not both) by the date he completed the Tribunal application, as page 10 referred to "*…the freeholder and its agent…self-certifying their own budget…*". It is also worth pointing out that late service of an Estimate would not extinguish the applicant's liability to pay the Interim Charge. This is expressly dealt with at paragraph 4.3 of Schedule 5 to the lease, which provides for payment at the old rate until the new Interim Charge is "*ascertained*".

54. Section 19(2) of the 1985 Act provides that "*Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable*

is so payable…". The Tribunal is satisfied that all three Interim Charges are reasonable and payable. There is no lease requirement for Estimates to be certified.

Reserve Fund contributions

55. The disputed contributions all relate to planned major works at the Block. As explained at paragraph 5 above, RFML undertook a section 20 consultation for works to the front elevation and internal common parts in 2014/15 and had accepted the lowest tender from Rosewood. The F-tT determined that a service charge would be payable if the works were undertaken in accordance with the Rosewood tender, in its decision on the Third Application.

56. Rosewood subsequently increased their tenders by 6.03% and RFML demanded a reserve contribution of £11,363.57 from the applicant on 09 February 2016. This provided the following breakdown

" INTERNAL REFURBISHMENT & COMPLIANCE WORKS

Original tender price being £59,900.00 + uplift of 6.03% + 9½% Fees +20% VAT = £83,454.73

EXTERNAL REDECORATION WORKS

Original tender price being £49,040.00 + uplift of 6.03% +9½% Fees +20% VAT = £68,324.21

Summary: £83,454.73 + £68,324.21 = £151,778.94 less £38,143.20 Reserve Fund (as at 24.12.15) = £113,635.84 of which you are liable to pay 10% as per the covenants of your lease"

57. This contribution formed part of the Fourth Application to the F-tT, which was compromised on 16 September 2016. The figure agreed at paragraph 2 of the settlement agreement was £15,441, which included the contribution of £11,363.57.

58. Mr Wayne Rodrigues of RFML accepted the increased tender prices in an email to Mr John O'Sullivan of Rosewood dated 20 September 2016. A start date of 03 January 2017 was mooted, subject to confirmation of the project from the respondent. It appears this was not forthcoming as Mr O'Sullivan sent an email to Mr Rodrigues on 12 January 2017, in the following terms:

"Further to receipt of your last email and to keep you advised of where we're positioned we have been fortunate receive a number of confirmed instructions up to April. Consequently we are now booking May onward starts on a first come first served basis.

Regretfully for 11-20 Southwold this means we are substantially beyond a point whereby we could retain our price without a significant price sic (in the region of c20%), so if it assists we can withdraw from the process?"

This was sent shortly after Burlington took over the management of the Block.

59. At the time of the handover there were insufficient funds in the reserve account to pay for the major works. Burlington decided to split the works into two phases, with phase 1 being internal work and phase being external work. It instructed building surveyors, Harris Associates Limited ('HAL'), to prepare a new specification for the internal works, which was produced in November 2017. Burlington then embarked on a new section 20 consultation and sent notices of intention to leaseholders on 02 November 2017 and statements of estimates on 23 February 2018. The lowest tender was from A S Ramsay Building Contractors ('Ramsay') in the sum of £94,259 (excluding VAT). Rosewood's tender came in at £112,295 plus VAT. Burlington subsequently instructed Ramsay and the internal work commenced in May 2018.

60. Burlington included a reserve fund contributions of £2,500 in the service charge demand dated 20 June 2017 (for June to December 2017). A further reserve contribution of £2,500 was included in the demand dated 18 December 2017 (for December 2017 to June 2018).

61. At Burlington's request, HAL produced an external schedule of condition dated 29 March 2018. This addressed the front and rear elevations, as well as the roof. Burlington intend to include all of these areas in the phase 2 works, having first built up a substantial reserve fund.

62. The second and third questions for determination by the Tribunal, as described on page 10 of the Current Application form, were:

"2. Is the freeholder unreasonable in demanding payment of 1/10th of the 2016 price of the front elevation works, in order to start the works purportedly in March 2018, when:

(1) no specification of works exists,

(2) no tender has been agreed,

(3) the agent advised by email in 2017 that the works would cost substantially more than (10 x £11,300) (c) £113,000 as the specification of works and agreed tender were deficient despite their being specifically approved by the RPT in its 2016 Judgment?

3. Is the freeholder unreasonable in demanding £5000 for a Reserve Fund when:

(1) the agent admitted by email in 2017 there would need to be Reserve Fund to pay for the rear elevation works proposed for the rest of the street in mid-2018;

(2) the said rear elevation works would presumably have been costed and even charged to those other blocks;

(3) the lessee has not been consulted on such works, has not received any specification of works, or tender;

(4) this lessee does not agree without further information that such works are necessary."

63. Question 2 related to the reserve fund contribution of £11,363.53 demanded 09 February 2016. This had been agreed by the applicant as part of the settlement of the Fourth Application. Not surprisingly, Mr Modha argued that the Tribunal had no jurisdiction to determine this item by virtue of section 27A(4). The applicant withdrew this issue during the course of the hearing.

64. The applicant disputed the June and December 2017 reserve contributions on the following grounds:

(a) The F-tT had "*approved*" the Rosewood tenders for the works to the front elevation and internal common parts, in its decision on the Third Application. These works should have started in January 2017 but were unnecessarily abandoned. Had Rosewood undertaken the works in early 2017 then the applicant's contribution would be limited to the sum demanded in February 2016 (c£11,300) and there would have been no need for the additional £2,500 contributions demanded for June to December 2017.

(b) The cost of the major works has substantially increased, due to the new specification for the internal works and the increase in the scope of the external works. The total of the original Rosewood tenders was approximately £108,000 but the anticipated cost of the works has now increased to c£278,000. The respondent/Burlington should bear the increase in the cost of these works, arising from their delay.

(c) Burlington manage other properties in Widley Road and were planning to synchronise works to all rear elevations, to achieve economies of scale. The purpose of the 2017/18 contributions was to raise funds for the rear elevation of the Block. Burlington abandoned this work in or about February 2018 and it is unnecessary to collect substantial reserves at present.

(d) Based on the HAL schedule of condition, the scope of the external works should be limited. Much of the exterior is in reasonable condition. The

largest items are the potential removal of metal balconies/terraces on the rear elevation and the replacement of windows to both elevations.

65. On questioning from the Tribunal, the applicant accepted it was reasonable to operate a general reserve fund for Block. When pressed, he said a sensible reserve contribution for the Flat would be £500-1,000 per annum. However, there should be no specific contributions for the major works.

66. In her oral evidence, Ms Clifford stated that only two leaseholders had paid their reserve contributions when Burlington took over the management of the Block. One other had paid in part and the applicant was paying his contribution by instalments. Ms Clifford then set about collecting the remaining contributions, which took a considerable time. By February 2018 she had collected the bulk of these contributions. The applicant is still paying his by instalments and a small amount is due from one other leaseholder.

67. In her statement, Ms Clifford explained that the 2017 reserve contributions were demanded, as it was clear that the contributions demanded in February 2016 would be insufficient to cover all works at the Block. As at 11 May 2018 the reserve fund balance at the bank was £117,929.80, which is less than the anticipated cost of the phase 1 works (£128,370.25 including VAT and surveyor's fees).

68. Following receipt of the HAL schedule of condition, Ms Clifford spoke to the author (Chris Mace), who indicated that the total cost of the external works would be approximately £150,000. This was based on the schedule and his experience of external works at other properties in Widley Road. Using this figure, the total anticipated cost of the phase 1 and 2 works will be approximately £278,000. Ms Clifford hopes to build up a reserve of £150,000-200,000 to cover the phase 2 works and plans to start the section 20 consultation in 2019. The HAL schedule of condition will be the starting point for the specification but the scope of the works will depend on the condition of the Block at that time. Based on past experiences at the Block, it would be preferable to build up the Reserve Fund in several instalments rather than demanding lump sums from the leaseholders.

69. Ms Clifford was cross-examined at some length regarding a tender from Rosewood dated 25 January 2017. This was for £112,315 (excluding VAT) and was stated to be *"…open for consideration for 6 months…"*. The applicant's questions assumed that this figure covered the internal and external works that had been considered by the F-tT in the Third Application. He suggested that Burlington should have been instructed Rosewood to undertake the internal works, following the handover in January 2017. It received £44,000 from RFML in early February 2017, which would have covered the bulk of the internal works. Burlington could have collected the shortfall by actively pursuing the February 2016 reserve contributions and then instructed Rosewood within the 6-month acceptance period.

70. Ms Clifford pointed out that although the Rosewood tender was dated 25 January 2017 it referred to a return date of 02 February 2018. Furthermore the 6-month acceptance period was at odds with Mr O'Sullivan's email of 12 January 2017, notifying RFML of the potential price increase. On examination by the Tribunal, it became apparent that the tender was incorrectly dated and should have been dated 12 January 2018, as it relates to the current internal works. This is clear from HAL's tender report dated 09 February 2018, which includes this tender.

71. Notwithstanding this discovery, the applicant maintained that Burlington should have instructed Rosewood in early 2017. He suggested that Ms Clifford could have negotiated a lower price increase than the 20% mooted by Mr O'Sullivan. Even with this increase, it would have been cheaper for Rosewood to undertake the internal works.

72. Mr Modha referred to the email exchange on 02 November 2016. At 9.00am, Mr Renshaw sent a long email to all leaseholders regarding the future management of the Block, which included the following passage:

"We all support:

- *Moving from RFM to Burlington ASAP*
- *Restarting the works processes with a new surveyor and specification ASAP*
- *Doing the works in stages, starting ASAP*
- *Reinstating building up the sinking fund pending the new works starting next year – including a 'catch up' for having missed payments".*

Mr Renshaw asked everyone to confirm their agreement and the applicant responded at 5.35pm, saying "*That's fine*."

73. The applicant explained that he agreed Mr Renshaw's proposals in November 2016, as he expected urgent implementation but this did not materialise.

74. Mr Modha submitted that the applicant's position was contradictory, as he was unwilling to pay the recent Reserve Fund contributions but said a contribution of £500-1,000 per annum would be sensible. Mr Modha also pointed out that the scope of and cost of the phase 2 works was unknown and other types of work might be required. The reserve contributions are for costs yet to be incurred and are reasonable, given the limited funds on the management handover (£44,000) and the advice from HAL. If the applicant is dissatisfied with the actual cost of the works, following completion then he can apply for a section 27A determination at that stage.

75. In his closing submissions, the applicant referred to the definition of the Reserve Fund in schedule 5 of the lease. This is for future expenditure that the respondent *"…expects to incur…"*. Based on the HAL schedule of condition, the scope of the works to the rear elevation should be limited. There are no costings for the phase 2 works and the £150,000 estimate is excessive. The applicant suggested a more realistic figure would be £30,000-50,000 and concluded that there was "*no clear, cogent case for reserve contributions of £5,000 pa*".

The Tribunal's decision

76. The Tribunal determines that the following Reserve Fund contributions are payable by the Applicant:

24 June – 24 December 2017 £2,500

25 December 2017 – 23 June 2018 £2,500

Reasons for the Tribunal's decision

77. It was entirely reasonable for Burlington to instruct HAL to prepare a new specification for the internal works, once they took over the management of the Block. There were concerns about the previous tender prepared by RFML, which the applicant had himself described as *"…ludicrously bad…"* in an email to Ms Clifford dated 16 January 2018. Further, he had agreed the change of managing agents, a new surveyor and specification and phasing of the works in his email to Mr Renshaw of 02 November 2016. Burlington took over two months later and implemented Mr Renshaw's proposals.

78. The Tribunal rejects the suggestion that Rosewood should have been instructed in early 2017. This was contrary to Mr Renshaw's proposals, which the applicant had agreed. Further there were insufficient funds to meet the cost of this work. Burlington received £44,000 from RFML and the total cost of the internal work, as shown in the February 2016 reserve demand was approximately £83,000. This was before the 20% increase mooted by Mr O'Sullivan in January 2017.

79. Burlington's decision to collect additional Reserve Fund contributions was entirely reasonable and good practice, given the increase in the cost of the internal works and the need for external works. This meant the contributions demanded in February 2016 were insufficient.

80. The respondent *"…expects to incur…"* the cost of the internal and external works, so these costs come within the Reserve Fund definition. The scope of the external works is yet to be decided and consulted upon with the leaseholders but the cost will be substantial. The anticipated cost of the work to the front elevation in February 2016 was £68,324. In addition there is the work to the rear elevation. HAL's rough estimate for phase 2 was £150,000, which the Tribunal much prefers to the applicant's figure of £30,000-50,000. HAL are

professional surveyors, with experience of other external works at Widley Road. It was reasonable for Burlington to use the £150,000 figure when calculating the reserve contributions.

81. Given there have been four previous tribunal applications, it was prudent for Burlington to take a cautious approach to calculating the Reserve Fund contributions. These contributions are advance service charge payments for relevant costs yet to be incurred. The amounts demanded are reasonable and are payable in accordance with subsection 19(2) of the 1985 Act. This subsection specifically provides that "*…after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise*." If the works cost less than the sum in the Reserve Fund then the applicant will be entitled to a credit or refund for his overpayments. Further, he retains the ability to challenge the scope and cost of these works, once completed.

Costs

82. At the end of the hearing, the Tribunal heard brief submissions on the section 20C and paragraph 5A applications. The applicant argued that orders should be made, as the application had highlighted problems with Burlington's conduct. There had been a lack of care and consideration and the respondent should bear its own costs of the application. The applicant also referred to his willingness to mediate, which had not been reciprocated by the respondent. He suggested that the case could have been resolved at mediation, which would have saved costs.

83. Mr Modha opposed the costs applications, pointing out that the applicant had abandoned, conceded or withdrawn most of the points his statement of case. He submitted that the Current Application was premature in almost every respect and the only real issue was the Reserve Fund contributions.

84. The Tribunal concluded it would not be just or equitable to make a section 20C or paragraph 5A order, having regard to the outcome of the Current Application. By the conclusion of the hearing there were only two live issues; being the Interim Charges and Reserve Fund contributions. The applicant agreed the amount of the Interim Charges and the respondent has succeeded on the Reserve Fund contributions. The application was wholly unsuccessful and the respondent was entirely justified in contesting the case. Given this outcome and the earlier tribunal applications for the Block, it was not unreasonable for the respondent to decline the offer of mediation. The section 20C and paragraph 5A applications are refused.

85. The applicant had requested repayment of his Tribunal fees in the application form but did not raise this at the hearing. For the sake of completeness, the Tribunal refuses to make an order refunding these fees. Given the outcome of the case, the applicant should bear his own fees.

Next steps

86. This is the applicant's fifth tribunal application in the last seven years. He works as an advocate and appears to have legal experience and knowledge. However, many of his complaints were misconceived and reflected a lack of understanding of his lease. He should reflect on this and seek independent legal advice before embarking on any further proceedings.

Name: Tribunal Judge Donegan **Date of Decision:** 02 July 2018

RIGHTS OF APPEAL

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

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

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

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

Appendix 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 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 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.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Part 1

Reasonableness of Administration Charges

Meaning of "administration charges"

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

Limitation of administration charges: costs of proceedings

5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph –

(a) "litigation costs means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.