FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2019/0021**
Property	**:**	**17 Falmouth House, Clarendon Place, W2 2NT**
Applicant	**:**	**Falmouth House Limited**
Representative	**:**	**Ms Barden (Counsel)**
Respondents	**:**	**1.Treetop Investment LLC 2. Anar Properties Limited (now removed as a party) 3.Kiran Sancheti & Harshavardhan Sancheti**
Representative	**:**	**1.Mr Banerjee (not present) 2. Mr Ashok Sancheti (Representing the First Respondent) 3.Mr Loveday (Counsel for the Third Respondents)**
Type of application	**:**	**Service Charges**
Tribunal member(s)	**:**	**Mr M Martyński (Tribunal Judge) Mr H Geddes Mrs N Carr (Tribunal Judge)**
Date of hearing	**:**	**12, 13 & 14 February 2020**
Date of decision	**:**	**17 March 2020**

DECISION

Decision summary

1.The tribunal determines that the sums claimed by way of Service and Administration Charges are not payable by the Respondents.

Procedural Background

2. In November 2017, the Applicant issued proceedings in the Bromley County Court against the First Respondent, Treetop Investment LLC (a company registered in the state of Delaware USA). The claim was for £76,592.15 in respect of Service Charges, Administration Charges and Interest dating from June 2012 to June 2016.

3. The Applicant is the owner of the freehold interest in Falmouth House, W2 ('the Building'). The Building is a purpose-built block of 40 flats. It is the nominee purchaser of the freehold interest following an enfranchisement by a majority of the then leaseholders.

4. The long leasehold interest of Flat 17 in the Building was held by the First Respondent ('Treetop') until 9 June 2016. The lease was then transferred to Anar Properties Limited ('the Second Respondent'). The lease was further transferred to Kiran Sancheti & Harshavardhan Sancheti ('the Third Respondents) in 27 December 2017.

5. By an order dated 19 December 2018, Deputy District Judge Duncan, sitting in the Bromley County Court, made an order (so far as is relevant) in the following terms;

> *The Proceedings shall be transferred to the first tier tribunal (property chamber)*

6. In December 2018, Treetop petitioned for its own bankruptcy in Delaware. Invitations were made to the company's creditors to file claims in that bankruptcy. According to Mr Banerjee (who says that he is a Director of the Company), no claims were made by creditors.

7. Upon receiving the file from the County Court, the Tribunal gave directions on 26 February 2019 giving a final hearing date of 17 June 2019. At that stage the First Respondent had become Jeoffrey L. Burtch as Bankruptcy Trustee for the First Respondent. The Second and Third Respondents were added as parties.

8. In or about March 2019, Treetop then sought to complete the bankruptcy process and a court in Delaware, USA, made an order closing the bankruptcy, no creditors having filed a claim. This appears to have left Treetop free of bankruptcy and ready to trade as normal.

9. On 16 April 2019, the Second Respondent was dissolved.

10. On 18 June 2019 the proceedings were not ready for a final hearing and further directions were given with a further final hearing date of 30 September and 1 October 2019. The Second Respondent was removed as a party to the proceedings.

11. By 1 October 2019 the parties were still not ready for trial and further directions were given taking the matter to a final hearing on 12, 13 & 14 February 2020. Following the completion of the bankruptcy process in the USA, Treetop Investments were re-instated as the First Respondent.

12. At the hearing on 1 October 2019, Treetop Investments (by way of written submissions from Mr Banerjee) asserted that, following the bankruptcy proceedings in the USA, all the company's debts (including the sums claimed in these proceedings) were discharged. The Tribunal dismissed this argument in a written decision dated 16 October 2019. The Tribunal went on to make an order that Treetop were debarred from defending the claim save insofar as it had adopted the Third Respondents' case.

13. Treetop then submitted an application for permission to appeal the Tribunal's decisions. This application included a much more detailed submission than had been before the tribunal at the hearing on 1 October. The Tribunal informed the parties that it was considering reviewing its decision on the effect of the bankruptcy and invited further submissions. Treetop's application for permission to appeal and the question of whether the Tribunal was going to review (and possibly change its decision) was not finalised prior to the final hearing of the proceedings which took place in February 2020.

The lease

14. The subject lease is dated 28 September 2005 made between Falmouth House Limited and Kerstin Schoedel and is for a term from its date and expiring on 25 March 3003 (a term of approximately 998 years) at a peppercorn rent.

15. Paragraph 2 of the lease, which sets out the demise, obliges the tenant to pay (as a rent) the '*Maintenance Contribution*' by equal quarterly payments in advance on the usual quarter days. The proportion of Maintenance Contribution payable by the leaseholder is 2.51%.

16. 'Maintenance Contribution' is defined in the lease as:

> … a sum equal to the percentage proportion appropriate to the Flat (as specified in Part I of the Fourth Schedule subject to the provisions of Part II of that Schedule) of the aggregate annual maintenance provision for the whole of the Building for each Maintenance Year (as computed in accordance with the provisions of Part III of the same Schedule).

17. The Annual Maintenance Provision is defined as "*the annual amount calculated in accordance with the Fourth Schedule*".

18. The 'Maintenance Year' is the 12-month period ending 24 March.

19. Part III of the Fourth Schedule deals with the computation of the Annual Maintenance Provision, and reads as follows:-

a. Save in the first year the Annual Maintenance Provision in respect of each Maintenance Year shall be computed not later than four weeks prior to the commencement of the Maintenance Year

b. The Annual Maintenance Provision in respect each Maintenance Year shall be computed in accordance with paragraph 2 hereof

2. The Annual Maintenance Provision shall consist of a sum comprising:

2.1 the expenditure estimated as likely to be incurred in the Maintenance Year by the Landlord for the purposes mentioned in the Fifth Schedule together with

2.2 an appropriate amount as a reserve for or towards those of the matters mentioned in the Fifth Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise at intervals of more than one year including (without prejudice to the generality of the foregoing) such matters as the painting of the common parts and the exterior of the Building the repair and renewal of the Conduits in the Building the repair of the structure thereof the repair of drains and the overhaul renewal and modernisation of any plant or machinery (the said amount to be computed in such manner as to ensure as far as is reasonably foreseeable that the Annual Maintenance Provision shall not unduly fluctuate from year to year) together with

2.3 a sum equal to any maintenance contribution (or part thereof payable in respect of any flat in the Building) in respect of any preceding Maintenance Year which shall not have been paid at the date on which the computation is made Provided Always that no such sum shall be included unless the Surveyor is satisfied that the Landlord has taken reasonable steps to recover such sum from the person liable to pay the same

REDUCED BY:

2.4 any unexpended reserve already made pursuant to paragraph 2.2 hereof in respect of any such expenditure as is mentioned in paragraph 2.1 hereof and further

2.5 any sum by way of maintenance contribution which was included in the computation for any previous Maintenance Year pursuant to paragraph 2.3 hereof and has since been recovered by the Landlord from the person liable to pay the same

3.1 After the end of each Maintenance Year the Surveyor shall determine the Maintenance Adjustment calculated as set out in the next following paragraph

3.2 The Maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2.1 above shall have exceeded or fallen short of the actual expenditure in the Maintenance Year

3.3 The Tenant shall be allowed or shall on demand pay as the case may be against or with the next instalment of maintenance contribution falling due after the date of such

> determination the percentage proportion appropriate to the Flat of the Maintenance Adjustment
>
> 4. A certificate signed by the Surveyor and purporting to show the amount of the Annual Maintenance Provision or the amount of any Maintenance Adjustment for any Maintenance Year shall be conclusive of such amount and in giving such certificate the Surveyor shall be deemed to be acting as an expert and not as an arbitrator
>
> 5. The Landlord shall procure that there shall be open to inspection by the Tenant during ordinary business hours at the office of the Surveyor during the Term audited accounts of the Maintenance Fund for the preceding Maintenance year (provided that the Tenant shall give to the Surveyor reasonable notice in writing of his desire to see such copies) and the Landlord shall further supply to the Tenant a summary of such accounts

20. Breaking this mechanism down; the leaseholders pay the Service Charge in equal quarterly instalments; the lease provides for the landlord to make an assessment for the forthcoming year of anticipated expenditure and allowances and for the leaseholders to pay this – in advance in quarterly instalments. This is all very common, but the lease in this case adds further complications. The main complication is the provisions of paragraphs 2.3 to 2.5 which provide for certain adjustments and reductions.

21. The lease goes on to provide for the balancing of the Service Charge account at paragraphs 3.1 to 3.3. After the end of the Service Charge year an account should be taken of by how much the actual expenditure has exceeded or fallen short of the payments on account and an adjustment made for the next quarterly payment.

22. Throughout the period in question in these proceedings, the Applicant has operated only on an advance payment basis. There has been no reconciliation of over/under payment.

General background

23. Dr Pari-Naz Mohanna is a Director of the Applicant company and a long-time resident of the Building (although not currently resident). She made a witness statement in these proceedings and gave oral evidence to the tribunal in the course of the final hearing in these proceedings. We found her to be a reliable and open witness. Dr Mohanna sets out a history of the disputes in the Building in her witness statement. Even if one assumes that this is a partisan account, she has, in this history, set out various facts which go some way to illustrate the battles that have raged in the Building for some time. We summarise some of Dr Mohanna's history as follows.

24. In 2004 some (27 out of 40) of the leaseholders enfranchised by taking the freehold of the Building.

25. In December 2008, the then, directors of the Applicant petitioned to have the Applicant wound up due to insolvency. In 2009 other shareholders in the

Applicant convened an EGM and removed the existing directors. New directors (including Dr Mohanna) were appointed who then tried to withdraw the winding up petitions. This was opposed by the former directors (who included the wife of Mr David Dao. Mr Dao is a leaseholder who has generally supported the Respondents in these proceedings and has made witness statements in these proceedings).

26. The question of the winding-up was resolved by an order of the High Court on 9 March 2010 when the winding up petition was dismissed.

27. In 2010 a claim was then brought against the Applicant by a Mr Panayotov (one of the former directors who had sought the winding up). This claim was supported by Mr Dao. That claim failed as did an attempted appeal.

28. In 2011, Treetop issued proceedings against the Applicant relating to its flat in the County Court. That claim was struck out on 11 December 2018.

29. In 2016, Mr Ashok Sancheti, who represented Treetop at the final hearing in these proceedings, laid an information before Westminster Magistrates Court seeking to prosecute the officers of the Applicant. The proceedings were dismissed on 12 September 2016 and Mr Sancheti was ordered to pay costs of £33,000 which, Dr Mohanna says, remain unpaid.

30. In January 2016 Mr Dao made an application to the FTT for the appointment of a manager. He was represented by Mr Ashok Sancheti. Those proceedings were unsuccessful.

31. Also in January 2016, Treetop (represented by Mr Ashok Sancheti) petitioned the High Court under the Companies Act. Those proceedings were dismissed in August 2016 and appeal against that decision was dismissed in 2017.

32. Dr Mohanna stated that when the Applicant sought to enforce costs orders against Treetop, they found that the subject flat and its garage had been transferred to Anar Properties Limited, the Second Respondent. This company, says Dr Mohanna, was set up by Ashok Sancheti with the sole director being his son, one of the Third Respondents, Harshavardhan Sancheti. In May 2017 a freezing injunction was made against Anar.

33. Dr Mohanna suggests that the bankruptcy of Treetop in the USA was no more than a device to avoid the payment of Service Charges (after proceedings for them had been issued). She quotes from the trustee's motion to dismiss the bankruptcy as follows:

> The Debtor's schedules show that the only real parties in interest in the Case are Sancheti (an insider) and FHL (adverse party in the pending litigation). The other scheduled claimants .....hold less than $600 of the scheduled debt. Thus the Case effectively comprises a two-party dispute. Further, it would appear that the two-party dispute can be effectively resolved through the pending litigation in the London court. It appears evident

to the Trustee that the filing of this Case was purely to obtain some tactical litigation advantage.

34. Treetop have not paid any Service Charges, nor has Anar Properties, nor have the Sanchetis. We have little doubt that their intention is to pay nothing and to avoid liability by any means. We come to that conclusion for the following reasons:

(a) The history of litigation between the parties clearly shows that there is huge animosity between two main factions at the Building, the first of those factions being the current directors of the Applicant and the others being the former directors (including Mr Dao) and the various owners of Flat 17 and other members of the Sancheti family.

(b) The fact that no Service Charges whatsoever have been paid – even if there was genuine concern on the part of the Respondents on the way the Building is managed, the fact is that the Building cannot be run without some contribution to its funds.

(c) The fact that Treetop were willing to rely on any technical argument to avoid liability, no matter how far-fetched and unmeritorious, in these proceedings (see later in this decision).

The calculation and demand of the Service Charge

35. It was clear to us from the evidence given by Dr Mohanna, that the calculation of the Service Charges for the Building and cascaded down to each leaseholder was done on a straightforward basis as follows. We were shown accounts whereby the various heads of expenditure for the Building are set out – i.e. staff salaries, insurance, gardening, repairs etc. For each item of expenditure there is a budget for the previous year and an estimate for the forthcoming year and a total for the year is set out. The total is then divided between the leaseholders as per the percentage terms of their leases.

36. In relation to Part III of the Fourth Schedule to the subject lease, it is clear that paragraph 2.1 is complied with in that the estimated expenditure is calculated. The accounts referred to above and approved by the directors clearly make a provision in respect of reserves in accordance with paragraph 2.2.

37. Paragraph 2.3 is a provision to deal with arrears of Service Charge. If there are arrears, despite the landlord's reasonable efforts to get them paid by leaseholders, these are added to the total expenses. It is clear that this was not done, there is no provision for them in the accounts.

38. We then come to paragraphs 2.4 & 2.5 which deal with reductions to a leaseholder's Service Charge. Paragraph 2.4 deals with a reduction in respect of unexpended reserves. Paragraph 2.5 deals with credits to be given for the recovery of unpaid Service Charges. It is clear that neither of these adjustments were made during the period in question in these proceedings.

The issues and our decisions

1. *Limitation*

39. It was accepted by the Applicant that some of the amount claimed was now time-barred, this reduced the total claim to £67,035.50.

2. *The calculation of the Annual Maintenance Provision*

Third Respondents' case

40. It was the Third Respondents' case that its arguments on this issue, which relate to all Service Charges, has the result that none of the charges claimed are due or payable. Mr Sancheti for the First Respondent adopted the Third Respondents' case.

41. Quite simply, Mr Loveday (Counsel for the Third Respondents) argued that the essential (and unusual) terms of the subject lease for the operation of the Service Charge have not been complied with and accordingly there is no liability.

42. According to Mr Loveday, the Annual Maintenance Provision ('AMP') was not computed in accordance with Part III of the Fourth Schedule. The provision made by the Applicant included the matters in paragraphs 2.1 & 2.2 but failed to include the debits and credits for paragraphs 2.3, 2.4 & 2.5. The lease provides that the AMP; '*shall be computed in accordance with paragraph 2 hereof*'. After the items set out in paragraphs 2.1, 2.2 & 2.3 are the words 'REDUCED BY'. This reduction was not calculated.

43. Mr Loveday did not seek to argue that the provisions of the Fourth Schedule were a condition precedent. He argued that unless one follows the route to calculation set out by the lease, there is a failure to properly calculate the Service Charges due from a flat owner which is fatal to any claim for those charges. The word '*shall*' (as quoted above) means, in the overall context of the provisions that the process is mandatory.

44. Mr Loveday referred us to *Leonora Investment Co Ltd v Mott MacDonald* [2008] All ER(D) 302 (Jul). The Court in that case was dealing with a lease prescribing a route to the calculation and demand of Service Charges. In finding that the landlord had not followed the route and that charges claimed under the lease were not payable, Lord Justice Wilson commented:-

> 22. As to Mr Seitler's points about conditionality, I do not see this as a case in which the leases contain a condition precedent to the landlord's right to recover. Rather they prescribe the contractual route down which the landlord must travel to be entitled to payment.....

> 23. So I conclude that the Judge was right to decide that the landlord was not entitled to payment of the invoice because it had not followed the paragraph 3 procedure .....

45. Mr Loveday added that there was no question of waiver in respect of the failings to follow the route set out in the lease at paragraph 2.3. The only party with a right to waive is the tenant and there is of course no evidence that there was such a waiver.

The Applicant's case

46. Ms Barden, Counsel for the Applicant, argued that how the AMP is calculated is not a condition precedent for payment of the Service Charges demanded. The leaseholder simply has to be informed of the Maintenance Contribution for the liability to arise. The calculation of the AMP is a different matter.

47. Ms Barden referred to the comments of the Upper Tribunal in *Southwark LBC v Woelke* [2013] UKUT 349 (LC) on the question of compliance with the lease and the corresponding obligation to make payments. At paragraph 40 of the judgment, the Deputy President states as follows:

> Where a contract lays down a process giving one party the right to trigger a liability of the other party, such as the payment of a sum of money in response to a demand, it is a question of construction of the contract whether the steps in the process are essential to the creation of the liability, or whether the process may unilaterally be varied or departed from without invalidating the demand. Where issues such as those in this appeal arise, it is necessary to identify the minimum requirements laid down by the lease before the obligation to pay the service charge will be created, and then to consider whether the circumstances of the case satisfy those minimum requirements. In considering each of those matters it is not appropriate to adopt a technical or legalistic approach. The service charge provisions of leases are practical arrangements which should be interpreted and applied in a businesslike way. On the other hand, precisely because the payment of service charges is a matter of routine, a businesslike approach to construction is unlikely to permit very much deviation from the relatively simple and readily understandable structure of annual accounting, regular payments on account and final balancing calculations with which residential leaseholders are very familiar. When entering into long residential leases the parties must be taken to intend that the service charge will be operated in accordance with the terms they have agreed. Leaseholders should be able to work out for themselves whether a sum is due to be paid by reading the lease and comparing the process it describes with the information provided in support of the demand by the landlord, without the involvement of lawyers or other advisers.

48. The lease, says Ms Barden, does not contain a requirement for the AMP to refer to the adjustments set out in paragraphs 2.3 to 2.5 in Part III of the Fourth Schedule.

49. Further, the Applicant can waive the requirements in paragraph 2.3 (leaseholders' arrears). The Applicant relied on *Woelke* and suggested that the clause operated for the benefit of the Applicant as a mechanism to recover leaseholder arrears.

Decision

50. ‘Maintenance Contribution’ is defined in the lease as a percentage of the AMP. The obligation to pay Maintenance Contribution is set out in paragraph 2 of the lease with the words; ‘YIELDING AND PAYING ….. the Maintenance Contribution ……. calculated pursuant to Part III of the Fourth Schedule…..’

51. In our view, the lease sets out the way in which the AMP must be calculated by use of the word ‘*shall*’. There is no evidence that the AMP was calculated in this way.

52. It follows then that the Maintenance Contribution has not been calculated and is not payable because a leaseholder is not given a figure to pay that reflects the Maintenance Contribution as defined by the lease. There is a serious failure to follow the contractual route to entitlement. The effect of the adjustments to be made by paragraphs 2.3 to 2.5 cannot be estimated, all that can be said is that, without these adjustments, the amount of the demanded Maintenance Contribution is almost certainly going to be incorrect. It appears to us that, for whatever reason, the draughtsman included the adjustment paragraphs as an essential part of the process. Whilst this may appear harsh on the Landlord, the provisions of the lease set out a process which has not been followed, this leaves, inevitably, the leaseholder with a legitimate concern that he or she is not being charged the correct amount.

53. This decision disposes of the claim for Service Charges and the other points raised by the Respondents on the those charges are therefore not strictly relevant. However, for clarity and certainty we will deal with and make decisions on all those issues.

3. Certification

Respondents’ case

54. The Respondents argued that the AMP was not certified in accordance with paragraph 4 of Part III to the Fourth Schedule and that certification was a condition precedent for the following reasons;
    (a) It is not optional under the terms of the lease;
    (b) The Surveyor is key to the calculation of key elements of the AMP (paras 2.3 & 2.5);
    (c) The AMP consists of more than a budget, it has, as described above, some very technical components, hence the need for a specialist to certify;
    (d) A certificate has to be provided whether demanded or not;
    (e) The Surveyor is, under the terms of the lease, not the landlord’s agent, but an expert.

Decision

55. We do not consider that the certification is a condition precedent in this case. There is no specific obligation to provide a certificate and nothing to oblige the landlord to send a certificate as part of the process of demanding the Service

Charge. Paragraph 4 of Part III to the Fourth Schedule simply states the fact that such a certificate will be conclusive of the AMP.

56. As pointed out by Ms Barden for the Applicant, 'Surveyor' is defined in the lease as '*the person or firm employed pursuant to paragraph 1 of the Fifth Schedule*'. The Fifth Schedule, at paragraph 1 refers to; '*Employing and paying a Surveyor to manage the Building and its curtilage and to collect the rents and maintenance contributions……*'. We consider that the lease terms were sufficiently satisfied by the certifications on the accounts for the years ending 24 March 2014 to 24 March 2017.

4. Balancing charges

Respondents' case

57. The First and Third Respondents argued that, as there was no Maintenance Adjustment after the Service Charge year end in accordance with para 3 of Part III to the Fourth Schedule, it was impossible to then calculate the AMP for the following year.

Decision

58. We agree, it is not possible to comply with the lease provisions on the calculation of the AMP without doing this balancing exercise.

5. Time of computation of AMP

Respondents' case

59. The First and Third Respondents argued that the obligation in paragraph 1.1 to compute the AMP 'not later than four weeks prior to the commencement of the Maintenance Year' imposed a time limit that is, in effect, a condition precedent to the obligation to pay advance Service Charges.

Decision

60. We do not agree that this stipulation can act as a condition precedent to the obligation to pay. The requirement is to calculate only, the leaseholder is only liable to pay on notification of the amount of the Maintenance Contribution.

6. *Calculation of Reserve Funds*

Respondents' case

61. The contribution to the Reserve Fund is one of the element of the AMP and there are some provisions in paragraph 2.2 as to how the reserves should be calculated.

62. The First and Third Respondents argued that there was no evidence about these calculations. The Third Respondents also argued that any reserves accrued had to be returned to leaseholders after 12 months due to the operation of paragraph 2.4, and that it was obvious that this had never been done.

Decision

63. Whilst there was no specific evidence on the calculation of reserves, we take into account of Dr Mohanna's evidence as to the problems with the Building over the years and the need to make provision for substantial repairs and maintenance. On balance, we conclude that there is sufficient evidence that the amounts for reserves were considered in accordance with the terms of the lease.

64. Further, paragraph 2.2 of Part III of the Fourth Schedule makes provision for sums that are anticipated to give rise to expenditure from year to year outside of the current service charge year. This does not delimit the amount of time those reserves may be held. Collection of such funds is to allow for maintenance of such things as painting and repair of communal areas; large scale works that need to be planned both financially and in execution over a longer period.

65. The Respondents' position fails to recognise the interrelationship of paragraphs 2.2 and 2.4 with 2.1. Paragraph 2.4 only requires return of reserves accrued under paragraph 2.2 in the event that they have been allocated and spent towards estimated expenditure on such planned maintenance in the present service charge year and there is a resulting surplus. That is the purpose of incorporating paragraph 2.1 into the deduction to be ascertained in 2.4. It would make a nonsense of the reserve fund provision if, as the Respondents contend, each year any reserves held for 12 months or more had to be returned to the leaseholders as unspent whether or not those works had been completed within the current service charge year.

7. *Validity of demands for the period when Adelaide Jones were the managing agents*

66. There was simply no evidence from the Applicant that demands from Adelaide Jones were compliant with statutory requirements (rights and obligations statements). Dr Mohanna was only able to give evidence in the broadest of terms

on this very specific issue. We conclude that there is no evidence to show statutory compliance for this period.

8. Validity of demands for the period when RMG were the managing agents

First Respondent's case

67. Mr Sancheti for the First Respondent argued that any service charge demand made was invalid because the Applicant is not the Landlord but rather a nominee of the 27 enfranchising individuals. Therefore the demands failed to fulfil the requirements of section 47 & 48 of the Landlord and Tenant Act 1987.

68. Mr Sanchetti further asserted that 'mere reproduction' of the statutory rights and obligations required under section 21B of the Landlord and Tenant Act 1985 was insufficient, and that in every case the text must be amended to reflect the particular scenario of the landlord and tenant's relationship. He relied on *Tingdene Holiday Parks Limited v Brian Cox & Ors* [2011] UKUT 310, paragraph 14, in support of this contention:

> Nor do I think that the sending of a copy of the statutory instrument constituted compliance with the statutory requirements. What was required to be sent was a document with a specific title – "Service Charges – Summary of tenants' rights and obligations" – and a specific text. The purpose is obvious: to ensure that the tenant, when he receives his demand, has clearly before him the statement of the rights and obligations that the Regulations set out; and the heading of the document is important in directing the tenant's attention to what it contains. The statutory instrument itself… clearly does not constitute the document that it prescribes and it does not fulfil the purpose that underlies the requirement.

69. Mr Sancheti further asserted that he had throughout the period of the First Respondent's tenure of the flat been involved in drafting correspondence in response to demands for payment, letters, final warnings and so forth. He was intimately acquainted with the whole history. He initially maintained that demands had not been received, then vacillated and stated he didn't know if they had been, as he only knew what Mr Banerjee had told him. When pressed, he conceded that there may have been service charge demands, and he had certainly been involved in writing responses to some, but he could not remember which documents prompted which responses to the Applicant over the period. He therefore adopted the Third Respondents' position regarding receipt of service charge demands (though the Third Respondents quite properly took no point on it in regard to this period at the hearing).

Decision

70. The First Respondent's assertion that the Applicant is not the Landlord is unsupportable. It was incorporated specifically in order to be the Landlord in relation to the premises and the enfranchisement. Its only shareholders are the individual leaseholders who enfranchised. The service charge demands should have shown (and did) the Applicant as the Landlord for the purposes of sections 47 and 48.

71. The First Respondent's contention that the notices were defective because the rights and obligations were not individually tailored to each leaseholder is equally without merit. Careful reading of *Tingdene* demonstrates that in that case, all that was sent was the statute. In this case, the rights and obligations sent were headed as anticipated by *Tingdene*, and included the prescribed text of the Act. There is no foundation for requiring a bespoke set of rights and obligations in each case – in fact such an approach is more rather than less likely to achieve confusion.

72. We found that Mr Sancheti's evidence was evasive and unreliable. It is clear that some service charge demands had been received, as they were responded to – in some cases by Mr Sancheti's assistance and direction. Mr Sancheti's own 'Note' for the hearing was prepared on the basis not that demands were not received, but rather that they were incompliant with the provisions of the lease or statutory requirements. We do not accept Mr Sancheti's evidence that only those letters in which he responded specifically making reference to a 'demand' were those demands that were received. Mr Banerjee admits receipt of some documents. On their own evidence, at least some of the demands were received.

73. Nevertheless, it is for the Applicant to demonstrate that the demands were served in accordance with the lease. The lease does not incorporate section 196 of the Law of Property Act 1925. Rather what it requires is that "any notice to the Tenant shall be properly served if sent by such post as aforesaid to the Tenant at the flat." The aforesaid postal service required to be used was Registered or Recorded Delivery. The only evidence available for the period of RMG's management suggests that second class post and/or email were used. Ms Mohanna's evidence that porters would have put the post through individual letterboxes or under doors is unsupported by evidence from those porters. The Applicant cannot therefore demonstrate that demands were delivered in accordance with the provisions of the lease.

9. *Landlord and Tenant Act 1985 s.19(2)*

The Third Respondents' case

74. Mr Loveday made the point that the charges in question were advance charges so the test to be applied is that contained in s.19(2), which provides that no greater amount than is reasonable is payable. Reference was made to *Waaler v LB Hownslow* [2017] EWCA Civ 45 which set out a two-stage test; first, whether the landlord's decision-making process was objectively reasonable and, second, whether the outcome was reasonable. Mr Loveday relied on the first test, that is the reasonableness of decision making process. He said that there was no evidence as to the reasoning behind the setting of the budgets.

Decision

75. Again, we only had very broad evidence from Dr Mohanna as to the budget setting process. It was clear however from that evidence that there was a process,

in that the budget would be prepared by the managing agents and that would then be sent to the Applicant's directors for approval. Dr Mohanna said that the Directors were experienced and were aware of the sums needed to run and maintain the Building and were therefore sufficiently experienced to make the necessary judgments.

76. There was no real evidence that the advance charges were unreasonable in amount. Accordingly, on balance we conclude that the charges were reasonable and, were it not for other factors, would be payable.

10. Administration Charges

77. These are mostly interest on unpaid Service Charges. The actual charges break down as follows;

Land Registry Search Fees – 2 items - £42.00
Administration fees – 7 items @ £48 - £288.00
Legal Fees – 7 items @£192 - £1,152.00
Interest - £8,006.70

Decision

78. So far as we can see, there is no evidence of the demand for these charges. Given that absence, they are not payable. Further, given that we have found that the Service Charges are not payable, there can be no claim for interest on those charges.

11. Reasonableness of Service Charges

Third Respondents' case

79. Mr Loveday limited his challenges to the expenses of the Porters and the Managing Agents.

Decision

80. We have no doubt that the charge for the porters is reasonable. We have to bear in mind that this is a building directly opposite Hyde Park with, no doubt, expectations of service commensurate with that location. The lease itself anticipates this with an obligation upon the Landlord in Part II of the Sixth Schedule to provide (uniformed) porterage for a minimum of 14 hours per day.

81. The evidence that we heard was that porterage was provided from 7am to 11pm, that is 16 hours per day. Dr Mohanna stated that previously there was a live-in head porter with accommodation.

82. There were broad objections made by the Respondents generally that the porters' time was unduly taken up dealing with short-term lettings in the flats where there was no owner-occupation. There was no specific evidence on this.

83. As to the managing agents, the only concern that we have is the fact that they consistently failed to implement the terms of the lease so far as the calculation of the AMP is concerned. This has caused significant problems and, on the limited evidence that we have from this time, we can only conclude that it is a failure to manage the Building properly. Otherwise however we consider that the Building, given the disputes there and the need to undertake large scale repairs and maintenance over recent years, has been managed to a reasonable standard. We therefore conclude that the managing agents' fees for the period should be reduced (insofar as this may ever be relevant) by 10%.

Review of decision dated 16 October 2019

84. In the light of this decision, we have decided not to review the decision of 16 October 2019 on the question of the effect of the bankruptcy of Treetop in the United States. Further, we refuse permission to appeal that decision.

Costs

s.20C

85. The Respondents made an application under s.20C Landlord and Tenant Act 1985 and the parties reserved their position on this. Given the effect of this decision, we are minded to make a s.20C order in favour of the Respondents as they have avoided liability for the various charges claimed. However, the parties may make further submissions if they want to pursue the matter.

Rule 13 costs

86. There is an outstanding Rule 13 costs application from the Third Respondents. If they wish to pursue this, they should file a separate Statement of Case setting out their case in full by **1 May 2020** to which the Applicant can respond by no later than **28 May 2020**.

Name:	**Deputy Regional Tribunal Judge Martyński**	**Date: 17 March 2020**

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).