FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00ML/LSC/2019/0096
Property	**:**	Flat 3, 43 Grand Parade, Brighton BN2 9QA
Applicant	**:**	Ms Elza Aleksandrova Mr M Alexander
Representative	**:**	Ms Elza Aleksandrova
Respondent	**:**	Powell & Co Investments Limited
Representative	**:**	Mr Sean Powell
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges
Tribunal Member(s)	**:**	Judge D. R. Whitney
Date of Hearing	**:**	19th June 2020 by CVP
Date of Determination	**:**	22nd July 2020

DETERMINATION

Background

1. This is an application by the Applicant, as a leaseholder of the Property to determine her liability to pay and the reasonableness of service charges as billed for the actual year ending June 2019.

2. Various directions were issued and a preliminary decision dated 18th May 2020 (a copy of which is annexed hereto) was issued under paragraph 5 of the Senior President's Pilot Practice Direction: Contingency Arrangements in the First Tier Tribunal dated 19th March 2020. This determination was objected to by both parties.

3. A remote hearing using Kinly CVP took place on 19th June 2020. Prior to the hearing both parties had filed with the tribunal various further documents, emails and submissions including copies of authorities despite no further direction being issued.

4. The hearing was attended by the Applicants with Mrs Alexsandrova representing herself and her son. Mr Powell appeared for the Respondent. The hearing was recorded and all parties consented to proceeding in this manner.

The Law

5. The relevant law is set out in sections 19, 20 and 27A of the Landlord and Tenant Act 1985.

Hearing

6. The tribunal allowed both sides to rely on the further documents and submissions they are had sent in between the provisional decision and the hearing. References in [] are to documents which can be found within the original hearing bundle.

7. The below is a precis only of the submissions made by the parties.

8. Mr Powell on behalf of the Respondent stated that he accepted the provisional decision save in respect of accountancy fees and the certification of the accounts. Further he confirmed he would offer similar credits as awarded to the Applicants to all other leaseholders in the building.

9. Mrs Alexsandrova stated in respect of the accounts and the recent amended accounts sent in following the provisional determination in her submission these did not comply with the lease terms. She stated that approximately one year had passed since the accounts for June 2019 should have been produced which notwithstanding the pandemic afforded ample opportunity for valid certified

accounts to have been produced. In her submission there was still no chartered accountants' certificate as required under the terms of her lease.

10. The Applicants relied upon clause 3(2)(ii)(b) of the lease [23] which provided that certified accounts should be provided. She suggested the accounts produced by Z Group did not include a certificate. The only certificate was from Powell & Co and this did not comply with the terms of the lease.

11. Mrs Alexsandrova further submitted that she continued to have concerns over the quality of the major works undertaken. She had sent to the tribunal various photographs which she said were taken on 4th June 2020. It was her submission that these showed that the works had not been undertaken to a reasonable level and are new evidence demonstrating the same. She further relied upon a letter from David Smith dated 19th September 2018 [66].

12. Mrs Alexsandrova relied on various cases but particularly Moorjani v Durban Estates ltd [2015] EWCA Civ. 1252 which in her opinion entitles her to a discount for unreasonable work.

13. Upon questioning by the tribunal Mrs Alexsandrova stated she had been unable to obtain a full report from Mr Smith as she had emailed him on 5th June 2020 but he had not responded due to the pandemic. She stated she had only discovered the quality was poor on or about 4th/5th June 2020 when she returned to the property following the lifting of lockdown restrictions.

14. Mrs Alexsandrova stated in her opinion she should pay nothing for the major works.

15. Turning to the invoice for the works [104] Mrs Alexsandrova stated in her view the invoice was illegal as it did not give the full address of the property. Further it failed to state what works had actually been undertaken. Mrs Alexsandrova raised similar concerns over the invoice from Neil Hewett [105].

16. In respect of the entryphone the Applicants continue to contend they should not have to pay. The reason being their flat continues to not be connected as it was fitted whilst Mrs Alexsandrova was out of the country. Mr Powell did not pay the invoice for the entryphone until 3rd August and she returned to the country on 21st July and so before paying he could have had the contractor re-attend and fit to her flat. In her opinion because this did not happen she is not obligated to pay as the works are not reasonable.

17. The Applican did not believe that one person could look after 500 flats. In her view the management charges are unreasonable. She stated it had been reported to Companies House that the management company had no employees. In her submission a

manager must have a qualification experience and knowledge. In her submission Mr Powell does not comply with the law.

18. In respect of the fee for the accountancy in her opinion this is too high. No breakdown of the cost has been given, such as an hourly rate. Mrs Alexsandrova referred to various earlier decisions CHI/OOML/LIS/2014/0064 and CHI/00ML/LSC/2016/0081. In her submission a similar fee only should be charged as allowed in those decisions. Mrs Alexsandrova explained her son who is a doctor would have to work for 6 days to earn £600.

19. Mrs Alexsandrova also now sought to challenge the insurance premium. She explained she had not done so previously as part of her statement of case as she had not seen the certificate. She sought to challenge now as she found that the policy included loss of rent which in her opinion should not be included.

20. In closing Mrs Alexsandrova also stated that in her opinion Section 20B of the Landlord and Tenant Act 1985 applied. She relied upon paragraphs 8, 11 and 12 of her statement of case [40 & 41] and her statement [161]. In her opinion further works are required which should be done without charge to make the building safe.

21. Mr Powell was given an opportunity to ask any questions of Mrs Alexsandrove but he did not ask any. The tribunal then had a short adjournment for the benefit of all participants.

22. Upon the resumption of the hearing Mr Powell made submissions.

23. He explained he purchased the freehold in 2016. He submitted that in every single year since Mrs Alexsandrova has purchased her flat in 2007 she has challenged the service charges. He stated when he purchased the freehold the building was in a desperate state of repair and the previous freeholder had despaired as to what to do. Mr Powell stated the other leaseholder were delighted that he got things done.

24. He stated that the works were completed about 2 years ago. Throughout the works there had been constant communication between the leaseholders and Patrick Goubel (the person overseeing the works). The building itself was close to the seafront and affected by the weather. Mr Powell stated that Recorder Riza QC in previous County court proceedings had accepted this and that the works had been done properly.

25. Mr Powell stated he had not been made aware of any issues in respect of the major works until Mrs Alexsandrova's recent emails. He stated if people tell him he will do something about it.

26. Mr Powell accepted the fee for Wilder Jayaker & Company was not recoverable.

27. It was his view that his signature certifying the accounts should be sufficient. He stated that Z Group subsequently prepared the accounts for earlier years (rather than just those produced by his office) but the charges were not included in earlier determinations. Mr Powell suggested that Recorder Riza had determined the earlier years without including the fees for Z Group.

28. Mrs Alexsandrova was then afforded opportunity to ask questions of Mr Powell.

29. Mr Powell explained that his office produce the first set of accounts which are then forwarded to the accountant to produce proper service charge accounts. His accountant charges £500 plus vat per year. He believes his accountants are competent and they are his regular accountants.

30. Mr Powell stated he accepted Recorder Riza's judgment. He believed there was some confusion over 2017/2018 and 2019 and Z Groups fee whilst referred to now in the accounts which Z Group had produced these were not the accounts which formed the basis of Recorder Riza QC's determination. If this was a mistake Mr Powell stated it was of his doing.

31. Mr Powell stated Mr Goubel worked well with the other leaseholders but could not work with Mrs Alexsandrova. Mr Powell stated when the works were completed they were inspected by Patrick Goubel and everything was in good order. The works may have deteriorated in the past two years due to the buildings location near the seafront.

32. Mr Powell confirmed Patrick Goubel is a property investor like Mr Powell. They own some buildings jointly. Mr Goubel has lots of experience overseeing building works. Mr Powell stated that like himself he did not believe Mr Goubel had any formal qualification but they both had over 20 years experience.

33. Mr Powell stated he was selling the freehold as it was not cost effective to manage. In his opinion Mrs Alexsandrova's behaviour is beyond reasonable.

34. Mrs Alexasandrova was then given an opportunity to reply. The tribunal indicated that the time afforded to her would be limited to 20 minutes.

35. In respect of the accounts she re-stated that in her opinion the certificates are not compliant with the lease.

36. As for the works these are in a poor state. She had not been in the property between March and June due to the pandemic as she had

stayed with her son. In her opinion the work was undertaken to an unreasonable standard.

Determination

37. The tribunal is satisfied both parties were afforded every opportunity to present their case. Despite no further directions being given for filing documents between the issue of the provisional decision and the CVP hearing both sides did. The tribunal allowed all to be entered and read and considered all.

38. It is plain that there is substantial animosity between the parties. Mrs Alexsandrova did admit that she is not always an easy going person and the tribunal did on occasion had to stop her when her submissions and questioning went beyond what was appropriate.

39. In determining matters regard must be had to our provisional determination which should be read together with this decision.

40. The tribunal firstly considered the question of the accounts and the certification. Reference had been made by both parties to ICAEW Tech ref 03/11. We also consider the lease and clause 3(2). What is clear is that there is an obligation under the terms of the lease for the accounts to be certified by a chartered accountant. Tech03/11 refers to this being a possibility. The tribunal accepts that unless it is a requirement of the lease then generally certification by an accountant may not be undertaken. Under this lease it is a requirement. This tribunal determines that the accounts produced by the accountant do not include a certificate of a chartered accountant as required under clause 3(2) of the lease. The report is not a certificate and the accountants could provide the same to satisfy the lease terms.

41. Whilst the accounts have been certified by Mr Powell this is not what the lease requires.

42. Turning to the accountants costs again we were not persuaded by the arguments of Mr Powell. The accounts produced for the earlier years included the accountancy costs. Those years had been determined and on balance we are not persuaded that they can be re-opened to include the charges. In reaching this determination we do make clear we have not determined what cost may be charged for preparing accounts for 2019 as no invoice has been produced for the same.

43. If we are wrong on the above we would have found the costs to be reasonable. Mrs Alexsandrova invites us to follow earlier decisions. This tribunal is not bound by the same. We can see Z Group have produced accounts. They are a London based accountancy practice whom we are told Mr Powell instructs regularly. A fee of £500 plus vat is reasonable in this tribunal's determination.

44. Mrs Alexsandrova has sought to challenge the costs of the major works. She has referred to various letters she obtained from a surveyor, David Smith. It is noteworthy despite lodging this application in the Autumn of 2019, well before the pandemic, her evidence was that she only approached him on 5th June 2020 to look again at the works to report as to whether or not they had been completed to a reasonable standard. Mrs Alexsandrova has produced various photographs and statements and relied on various cases.

45. We are satisfied that under the case law the tribunal may reduce the cost of such works if we are not satisfied as to the standard of works.

46. Mrs Alexsandrova also challenges the invoices and the lawfulness of the same. She also suggests that the costs are barred by section 20B of the Landlord and Tenant Act 1985.

47. Weighing up all the evidence on the balance of probabilities we find that the costs of the major works billed are reasonable and subject to certified accounts being issued will be payable.

48. We are satisfied the works were completed to a reasonable standard. The evidence supplied is some two years after completion and given the location of the building some deterioration is inevitable. In respect of the invoices we are satisfied these were for works to the building in connection with the major works and are properly payable. We are satisfied notice of the leaseholders obligation to pay towards such costs has been given by the Respondent satisfying section 20B of the Landlord and Tenant Act 1985.

49. The Respondent challenges the costs of the entryphone. We do not accept Mrs Alexsandrova's argument. This tribunal finds the costs reasonable and refers to its provisional determination.

50. The Respondent continues to challenge the management fees. This tribunal was satisfied the costs are reasonable. We refer to our provisional decision. It is clear that management of this building is far from straightforward. The fee charged in the circumstances is reasonable and payable.

51. Mrs Alexandrova did at this hearing look to challenge the insurance. Whilst the tribunal heard her argument we note she had not challenged this previously. We find that the insurance cost is reasonable. Mrs Alexandrova produced no alternative quotes or evidence that insurance could be obtained upon substantially more favourable terms and we were not persuaded there was any evidence that the cost was unreasonable.

52. We have considered whether we should make any costs orders. We once again decline to make an order pursuant to section 20C of the Landlord and Tenant Act 1985 but do make an order pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. We rely upon our reasons given in the provisional decision.

53. Finally we must comment on the way the litigation has proceeded. Whilst Mrs Alexandrova may look at this decision and consider it a victory her approach to the litigation has at times verged upon the unreasonable. She is now an experienced litigant. In pursuing matters at times her submissions and statements were unnecessarily rude and aggressive in tone towards the Respondent. This approach is far from helpful to either party or the tribunal. Freeholders and leaseholders have to work together but it is the freeholder who ultimately makes the decisions subject to compliance with the lease and statute.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

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Representative	**:**	Ms Elza Aleksandrova
Respondent	**:**	Powell & Co Investments Limited
Representative	**:**	Mr Sean Powell
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges
Tribunal Member(s)	**:**	Judge D. R. Whitney
Date of Determination	**:**	18th May 2020

DETERMINATION

THIS IS A PROVISIONAL DECISION UNDER PARAGRAPH 5 OF THE SENIOR PRESIDENT'S PILOT PRACTICE DIRECTION: CONTINGENCY ARRANGEMENTS IN THE FIRST-TIER TRIBUNAL DATED 19 MARCH 2020.

THE PARTIES ARE DIRECTED TO INDICATE BY 4pm ON 5TH JUNE 2020 WHETHER THEY CONSENT TO THE TRIBUNAL MAKING A BINDING DECISION ON THE PAPERS THAT IS IN THE SAME TERMS AS THE PROVIISONAL DECISION OR WHETHER THEY REQUEST A HEARING WHICH WILL BE DONE REMOTELY. IF A HEARING IS REQUESTED IT WILL TAKE PLACE ON THE 19TH JUNE 2020 BY MEANS OF VIDEO HEARING. A FAILURE TO INFORM THE TRIBUNAL WILL BE DEEMED AS CONSENT TO THE MAKING OF BINDING DECISION ON THE PAPERS.

Background

54. This is an application by the Applicant, as a leaseholder of the Property to determine her liability to pay and the reasonableness of service charges as billed for the actual year ending June 2019.

55. Various sets of directions have been given including a preliminary decision and further directions dated 17th April 2020.

The Law

56. The relevant law is set out in sections 19, 20 and 27A of the Landlord and Tenant Act 1985 which are set out in full in Annex A to this decision.

Determination

57. The tribunal had before it a bundle prepared by the Applicant and received by the tribunal on 8th January 2020. References in [] are to pages within that bundle.

58. It is worth noting that every stage of this litigation has been contested. The parties are unable to see eye to eye and this is the latest in a long running dispute which has involved the tribunal and the courts. Both parties have referred to matters which are not strictly relevant to this dispute. The tribunal has limited itself to determining the matters before it, being the Applicants liability to pay a shortfall for the actual service charge year ending 24th June 2019 and the reasonableness of the actual sums claimed.

59. In accordance with the directions given on 17th April 2020 both parties were given an opportunity to file further evidence electronically. Such evidence was to be received by 4pm on 6th May

2020. In fact both parties submitted various emails after this deadline. The tribunal confirms that in reaching its determination it has taken account of all emails sent by the parties up to and including 15th May 2020. These included accounts produced by the Respondent and commented upon by Mrs Aleksandrova.

60. The original application [1-10] looked to challenge the actual accounts as supplied shortly after that date for the service charge year ending 25th June 2019.

61. The Applicant includes [16-37] a copy of the lease of the Property which sets out the service charge mechanism. Under clause 3(2) the leaseholder is required to contribute 18% of the service charges. Pursuant to clause 3(2)(ii)(b) the landlord shall as soon as possible after the 24th June in each year effectively produce accounts and demand any balance due and owing "upon production of a certified account pay to…the Lessor the amount of such shortfall.." Clause 3(2)(ii)(d) confirms that certification shall take place by a Chartered Accountant.

62. The Fourth Schedule sets out the Respondents obligations and the Fifth Schedule those sums which the Respondent is entitled to recover 18% of the total costs from the Applicant.

63. A copy of the accounts originally relied upon by both parties for this Application are within the bundle [97]. On 15th May 2020 Mr Powell emailed the tribunal and the Applicant certified accounts dated that day. The certified accounts contain the same figures in respect of the actual expenditure.

64. The tribunal notes that the accounts refer to ICAEW Technical Release Tech 03/11. These accounts include a certificate given by Powell & Co Management Limited. There is no certificate given by the accountant.

65. The Applicant contends that the accounts as originally presented did not comply with the terms of the lease. Mrs Alexander had referred to Urban Splash Works Limited v. Ridgway & Cunningham [2018] UKUT 0032 (LC). This case found that dependant upon the other terms of the lease a requirement to have accounts certified may be a condition precedent.

66. The tribunal finds that the accounts, either those originally relied upon, or those provided under cover of 15th May 2020 by the Respondent do not comply with the terms of the lease. The tribunal makes this finding as the lease is clear that the accounts are required to be certified by a Chartered Accountant. This is a condition precedent which allows the Respondent as freeholder to demand any balancing payment. Without the certificate of a Chartered Accountant a fundamental term of the lease has not been complied with.

67. Neither the original accounts or the recently prepared set of accounts have a certificate provided by a Chartered Accountant. Whilst it is clear the accounts have now been reviewed by a Chartered Accountant at no point have they provided a certificate as required under the lease. Whilst the accounts have a "Report of findings" this is not the same as a certificate and even if we are wrong on this point the accounts have not been signed by any accountant. The only certificate is from the managing agent.

68. What follows from this is that no balancing payment is due and owing by the Applicant unless and until the Respondent provides properly certified accounts.

69. Notwithstanding the above finding the tribunal did consider what of the amounts claimed are reasonable if properly demanded.

70. Mr Powell has explained that he is a director of both the Respondent and also the managing agent Powell & Co Management Limited. He clearly is the person who has given the certificate on the accounts on behalf of the management company. Mr Powell in his email to the tribunal on 7th May 2020 indicated that an invoice from Townhouse Investments in the sum of £1778.05 for overseeing major works was not a sum he was any longer looking to recover. The tribunal records this concession and confirms that the Applicant is not required to pay any amount towards this cost.

71. Mr Powell does refer to seeking in future years to charge a management fee for overseeing major works. This is not a matter before this tribunal and it has not adjudicated upon the same.

72. The Applicants statement of case sets out the matters in dispute [38-42]. It appears that the following charges are not challenged:

- Fire Alarm maintenance: £649.20
- Communal electricity: £118
- Communal cleaning: £322

73. For the sake of completeness the tribunal confirms these sums are reasonable.

74. Whilst the original application referred to the Applicant challenging the amount of the building's insurance the Applicant in her statement of case and reply make no reference to the same. The tribunal has proceeded on the basis that the Applicant no longer challenges these amounts. The tribunal considers that a total charge of £1871.32 for the period 3rd May 2018 up to and including 18th July 2019 is reasonable for a building of the type in which the Property is situated.

75. The next charge challenged is that relating to accountancy fees. Two invoices have been produced. The first for Wilder Jayaker & Company in the sum of £120 [100] and the second from Z group totalling £1224 [101]. The Applicant challenges these on various grounds including the fact that Wilder Jayaker & Company are not chartered accountants and that the fees charged by Z Group have been incurred for earlier years which belatedly the Respondent discovered required certification.

76. The Respondent states how he had used Mr Jayaker for many years. When he discovered he was no longer registered as a chartered accountant he instructed Z Group who re-certified the account for the service charge years ending in June 2017 and 2018 and which the invoice covered.

77. The tribunal notes it has been provided with copies of the accounts for the years June 2017 and 2018 [144-159]. In both years a sum of £600 has been included for accountancy fees. The tribunal notes that these years have already been determined by the County Court in earlier proceedings.

78. Firstly in respect of Wilder Jayaker & Company we are not satisfied this has been reasonably incurred. This firm are not chartered accountants and we are unclear as to what they did and determine the cost is not reasonable. Effectively at best they could have prepared accounts which would be a function of the managing agent and should be covered by their fee.

79. Mr Powell with his email of 15th May 2020 forwarded part of an email from his accountants. This appears to indicate that the costs of accountancy in previous years was included and recorded within those accounts. We note in the accounts prepared by Z Group for the years 2017 and 2018 [144-159] a sum of £600 has been included in each year for accountancy. Given this amount has been included in each of those years we determine that the costs of the Z Group invoice dated 18th February 2019 is not properly due and payable as part of the year end accounts for June 2019. The tribunal reaches this conclusion on the basis that sums for the earlier years have been included and previously allowed. The tribunal notes that effectively for each year Z Groups charge is £600 (being £500 plus vat) which ordinarily the tribunal would accept is a reasonable fee. A reasonable fee has been allowed for the preparation of each of those preceding years accounts.

80. It would appear as yet no fee has been charged for preparation of the accounts for the year ending June 2019. If a fee is added into a later year then subject to the test of reasonableness such a sum would be recoverable.

81. The Applicant challenges the costs relating to maintenance and in particular the cost of a replacement door entry system. Invoices

are within the bundle [98 & 99]. The Applicant suggests the building as a whole already had a functioning door entry system and the system has not been connected to her flat as she has been away.

82. The Respondent states the cost is below the threshold for statutory consultation and the cost is reasonable. Mr Powell states that all other residents supported the installation.

83. The tribunal notes that the two invoices total £1120.80. Whilst it is correct the Applicants share is below the threshold the tribunal notes that Flat 1 pays 26% of the service charge costs. As a result their share would exceed £250. The Respondent is not looking to recover more than £250 from the Applicant and so the cap is not relevant.

84. The tribunal reminds itself it is for the Respondent to determine how services are provided. It does not appears to be disputed that the works have been undertaken nor specifically the cost. The challenged is that the Applicant appears to say these were not required and her flat has not been connected as the works were undertaken whilst she was overseas. The tribunal is satisfied that the cost is reasonable although the Respondent should ensure that the Applicants flat is connected to the same or opportunity provided for the same. The tribunal determines that the maintenance charges totalling £1632.80 are reasonable.

85. In respect of the management fees the Applicant takes issue with the fact these are charged by Powell & Co Management Limited. The Applicant has produced copies of the Companies House accounts for this company which appear to show it has no employees or income. She suggest the whole situation is a sham.

86. The Respondent candidly admits that Mr Sean Powell is the owner and director both of the Respondent and the management company. He suggests the fee charged is reasonable and he has no written agreement.

87. The tribunal has considered matters carefully. It notes that the management fee equates to £175 plus vat per unit. The tribunal also notes that it is not unusual for management companies and freeholders to be linked. Whether or not the management company is properly recording its affairs at Companies House is not a matter for this tribunal. We have used our own expertise and knowledge as an expert tribunal. We are satisfied that the fee charged of £1050 for managing a building such as this in central Brighton is at the lower end of those we may see. The tribunal is satisfied this fee is reasonable.

88. This leaves the major works element of the accounts. As stated above Mr Powell has accepted, he will not look to recover the Townhouse Investment cost of £1778.05. This leaves two items:

- Portsmouth Property Services
- Neil Hewett

89. The Applicant looks to challenge all of these sums suggesting the major works have not been subject to a proper consultation and the costs are not reasonable. Her statement of case and reply sets out her arguments in detail.

90. The Respondent suggests that previous tribunals have accepted he consulted properly and or granted him dispensation. He suggests that the works have been properly undertaken. He explains that Mr Hewett was an employee of Portsmouth Property Services but it was easier to employ him directly to undertake snagging work and this costs was deducted from monies owed to Portsmouth Property Services so that the costs charged were the same as envisaged.

91. A copy of the earlier decision is included [123-131] and was made under reference CHI/00ML/LDC/2018/0005. This decision did confirm that works had either been subject to satisfactory consultation or dispensation was granted. This tribunal is bound by that determination.

92. Mr Powell does also suggest that these were determined in the earlier judgment of Recorder Riza QC [115-122]. Whilst it is correct certain charges were adjudicated upon his judgment did not include these costs now included within the service charge accounts for the year ending June 2019. Recorder Riza in his judgment did accept all the charges levied by the Respondent in the years in dispute.

93. Both sides rely on various documents, reports and the like. It appears to be accepted that works have been undertaken although the Applicant is not satisfied with the quality of the works. Considering all of the evidence the tribunal determines that the works have been undertaken and the costs charged are reasonable. The tribunal allows in respect of final invoices for major works a sum £3,685.20.

94. This leaves the question of the making of an Order pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

95. Given the tribunal has determined that the accounts do not comply with the lease terms and therefore no valid demand has been made it must follow that the Applicants cannot be in breach of their lease for these sums. The tribunal determines it is appropriate to avoid

any dispute to confirm that no sums may be claimed by the Respondent from the Applicant as an administration charge and the making of an Order pursuant to Paragraph 5A is appropriate.

96. The tribunal has considered matters carefully in respect of Section 20C. The making of such orders are at the discretion of the tribunal and it is not simply a question of working out whether there is a winner or a loser. In the circumstances of this case on balance we determine it is not appropriate to make an order pursuant to section 20C. This means if the lease allows (and for the avoidance of doubt we make no determination on this point) the respondent may be able to recover their reasonable costs as a service charge expenditure from all leaseholders.

Conclusion

97. The tribunal makes this provisional decision as follows:

- No accounts for the year ending 24th June 2019 complying with the terms of the lease have been provided yet;
- No balancing payment is due from the Applicant to the Respondent;
- The tribunal determines that the accountancy fees claimed are not reasonable and payable;
- Mr Powell on behalf of the Respondent has conceded that he will not look to recover the invoice for Townhouse Investments;
- The tribunal has determined all other sums are reasonable if and when properly demanded;
- The tribunal makes an order pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002;

Judge D. R. Whitney