FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/33UF/LIS/2021/0014** **CAM/33UF/LLC/2021/0003**
HMCTS code (audio, video, paper)	**:**	**V: CVPREMOTE**
Property	**:**	**Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk NR11 8DB**
Applicant	**:**	**London Land Securities Limited**
Representative	**:**	**Ravinder Sharma, director**
Respondents	**:**	**Stephen Tearle and the other leaseholders listed in the table below**
Representative	**:**	**Stephen Tearle**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge David Wyatt** **Mr G F Smith MRICS FAAV REV**
Date of decision	**:**	**20 December 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are those described in paragraph 4 below. We have noted the contents.

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Decisions of the tribunal

(1) The tribunal determines that the following service charges are payable by the following Respondents for the following periods. These are the relevant service charge proportion of the relevant costs determined in paragraphs 33 and 35 below (deducting £2,100 in the case of Alan and Delia Roper as explained in paragraph 23 below).

Flat	Respondent(s)	Service charge %	Service charge payable (£)	
			1/7/2011-30/6/2012	1/7/2012-5/8/2012
15	Paul Roper and Brenda Sawdon	2.8	854.95	62.44
16	Paul Roper and Brenda Sawdon	3.5	1,068.69	78.05
25	Alan Walter Roper and Delia Roper	2.8	Nil	Nil
25	William Arnold and Joyce Arnold	2.8	Nil	Nil
28	Judith Batchelor	3.5	1,068.69	78.05
29	Eric Pooley	3.5	1,068.69	78.05
30	Stephen Tearle and Gabrielle Tearle	2.8	854.95	62.44

(2) The tribunal orders under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**") that the costs incurred by the Applicant landlord in connection with these 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 Respondents.

(3) The tribunal does not order the Respondents to reimburse the tribunal fees paid by the Applicant, or make any other order in respect of costs.

(4) As requested, the tribunal has sought to calculate contractual interest (set out in paragraph 42 below). However, these calculations cannot be relied upon. We make no determination of any interest payable because in these proceedings we do not have jurisdiction to do so. The parties must take independent advice and rely on their own interest calculations.

Reasons

Application and procedural matters

1. The Applicant landlord sought determinations under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**") of payability of service charges for:

   (i) 1 July 2011 to 30 June 2012; and

   (ii) 1 July to 6 August 2012.

2. On 20 July 2021, the judge gave case management directions and the application with details of the service charges sought from each Respondent were served. Following the directions, the Respondents applied for an order under section 20C of the 1985 Act.

3. The relevant legal provisions are set out in the Appendix to this decision.

4. The directions referred to the No. 18 Decision (described in paragraph 12 below) and provided for the Respondents to produce their case documents by 20 August 2021. The Applicant was required to produce their documents in response by 15 September 2021 and deliver the hearing bundles by 29 September 2021. Instead, the Respondents produced their own large (partially paginated) bundle of documents and the Applicant then delivered their bundle (of 228 pages). On 30 October 2021, the Respondents contacted the tribunal office to express concerns that the bundle from the Applicant had been slightly late and had included documents which had not been delivered with the earlier case documents.

5. There was no inspection and we are satisfied an inspection is not necessary to determine the issues in this case. At the hearing on 11 November 2021, the Applicant was represented by Ravinder Sharma and Narinder Sharma. The Respondents were generally represented by Stephen Tearle, with Gabrielle Tearle in attendance, but Paul Roper also attended with Alan Roper to make additional representations. We were satisfied that it was appropriate to take into account all the documents in both bundles, which had been delivered by 30 September 2021, a reasonable time before the hearing.

Background

6. There is a long history of applications to the tribunal in relation to Trafalgar Court. Originally an hotel, in the 1980s/90s the building was partially converted into flats let on long leases. It sits on the cliff top at Mundesley, exposed to the elements. The Applicant acquired the

freehold in 1999, when the conversion was unfinished. Persons connected with the Applicant are now the leaseholders of many of the individual flats. The Respondents are the "*independent*" leaseholders. The Property has been managed by tribunal-appointed managers for most of the last 20 years, but management returned to the Applicant between October 2009 and August 2012. The issues in the current proceedings relate to the latter part of that period.

7. The appointment of the second manager, Mr Wells, expired in about October 2009 when Mr Wells resigned and retired from practice. By then, he had started proceedings against the Applicant and/or leaseholders connected with it, but been unable to reach the stage of recovering ordinary service charges from them. He had collected funds from the Applicant and other leaseholders for major works and had arranged for some works to be carried out, but these had not been successful. When his appointment terminated, Mr Wells handed over to the Applicant the sum of £119,869.80, which the parties rounded to £119,870, being the residue of the funds Mr Wells had collected for major works.

8. Service charges payable for relevant costs incurred for periods to 30 June 2011 were determined by previous tribunals. The most recent such decisions are in CAM/33UF/LIS/2011/0001 and CAM/33UF/LSC/ 2012/0016. Service charges payable in advance by all leaseholders for further major works at Trafalgar Court were also determined following a separate hearing in CAM/33UF/LIS/2011/0001, with the total figure set out in a certificate of correction (the "**2012 Decision**"). In their decision notice dated 19 January 2012, the relevant tribunal noted [at 8-9] that the Applicant and connected leaseholders had paid service charges sought by Mr Wells for major works, but not the ordinary service charges he demanded. They noted it was not possible on the material provided to determine who had paid what, and as a result of the lack of ordinary service charge payments Mr Wells had used some major works funds to pay insurance and other basic costs.

9. From 2009, the Applicant did not progress the requisite major works, at least until after they faced a new application to appoint a manager. That application was not successful, solely because the requisite preliminary notice had not been given. Given a new preliminary notice and another application to appoint a manager, the Applicant progressed preparations for the works and signed a roofing contract with a building contractor. New managers (Messrs Maunder Taylor) were then appointed by a tribunal with effect from 6 August 2012 and took over the relevant contracts for the major works. With a change of manager, that appointment has been extended several times, most recently for a further five years, for the reasons set out in our decision dated 18 August 2021 in case number CAM/33UF/LOA/2021/0001 (the "**Manager Decision**"). The background is set out in more detail in that decision.

10. The relevant parties hotly contested entitlement to the £119,870 which had been handed over by Mr Wells to the Applicant in 2009. They did so for many reasons, outlined in the documents and various previous tribunal decisions produced in the bundles for this hearing. The Applicant said they had contributed far more than the "*independent*" leaseholders and some of those leaseholders could not have contributed because they did not acquire their leases until later. The other leaseholders contested this and again said they had paid ordinary service charges for years while the Applicant refused to do so and Mr Wells had, while commencing recovery action, used the major works fund to pay for buildings insurance and other essential matters. There were many other issues; these are only examples.

11. As a result, the new managers appointed in 2012 applied for directions as to the application of the £119,870. On 26 April 2013, a tribunal directed in CAM/33UF/LAM/ 2012/0001 (the "**2013 Decision**") [at 3] that: (a) the sum be used to: "*…partially defray the cost of the present major works contract…*" and (b) pursuant to section 42(4), and subject to (6) and (8), of the Landlord and Tenant Act 1987 (the "**1987 Act**"), the contributing leaseholders (defined in s.42(1) as tenants of two or more dwellings required under the terms of their leases to contribute to the same costs by the payment of service charges): "*…shall be treated as entitled by virtue of subsection 3(b) to such shares in the residue of the above fund as are proportionate to their respective liabilities to pay relevant service charges…*". That decision provided that any leaseholder wishing to assert they were entitled to a different share should apply to the county court for a determination of that question under section 52 of the 1987 Act.

12. The current application by the Applicant to determine payability of service charges for 1 July 2011 to 5 August 2012 followed our determination on 26 March 2021 in case number CAM/33UF/LIS/ 2020/0016 of an application by Alan Roper to determine the service charges payable as leaseholder of No. 18 for the same periods (the "**No. 18 Decision**"). He made that application because he wanted to sell the lease. When "*independent*" leaseholders had attempted to sell their leases in the past, the Applicant had alleged various historical sums were owed and had previously attempted to demand from some such leaseholders more than seemed likely to have been due.

Leases

13. The parties produced sample copies of the relevant leases and made their cases on the basis that for relevant purposes they were in the same terms. They were made between: (1) a former landlord; (2) Trafalgar Court (Mundesley) Management Company Limited; and (3) a former leaseholder. The management company has since been dissolved. Clauses 4(3) and 6(g) of the lease contain step-in provisions for the landlord if the management company failed to carry out its

obligations. In clause 3(1), the leaseholder covenants to pay the specified proportion of the maintenance charges. Part IV of Schedule 1 sets out two proportions. As confirmed in the 2012 Decision referenced above [at 27], the first (costs shared between Lady Hamilton House and Trafalgar Court) is no longer relevant. The relevant proportion is the second (costs for this building only), which the parties agreed is:

(i) 2.8% for flats 15, 25 and 30 (one-bedroom flats);

(ii) 3.5% for flats 16, 28 and 29 (larger flats).

14. Schedule 5 sets out the matters which will be relevant costs for the purposes of the maintenance charges, including (in summary, using the paragraph numbers from Schedule 5): (1) collection of maintenance charges and paying all proper expenses in respect thereof; and (13) making provision for payment of all legal and other costs and expenses incurred: (a) in the running and management of the building and in enforcement or attempted enforcement of the covenants conditions and regulations contained in the leases; and (b) in maintaining applications and representations in respect of any notice or order.

Issues

15. The parties agreed that (aside from the issue of whether any relevant costs are to be treated as having been paid from the major works fund, as described below), the last service charge payment made by each of the Respondents was of £187.50 in 2010 in respect of charges payable for earlier periods. The Respondents had made no other payment in respect of the periods we are concerned with in these proceedings.

16. The parties produced a volume of largely unnecessary material and rehearsed their many grievances against each other, most of which have already been decided, so far as possible, in previous decisions of tribunals in this jurisdiction. We repeated at the start of the hearing that we had no power generally to write off "stale" service charges. Since the relevant service charges were not reserved as rent, the relevant limitation period under the Limitation Act 1980 was 12 years. Similarly, we confirmed that we would not attempt to revisit matters which had already been dealt with in previous decisions. The remaining issues which it appeared we should decide in these proceedings were:

(i) the position in relation to the former and current leaseholders of No.25 and whether the former were entitled to set off £2,100 (which had been charged as additional "costs" on sale of No.18) against any sums otherwise payable;

(ii) whether sums payable for 1 July 2011 to 6 August 2012 in relation to costs paid by the Applicant to suppliers for the major works should be treated as having been paid; and

(iii) whether the other charges claimed for 1 July 2011 to 6 August 2012 were payable under the leases, and reasonably incurred.

Leaseholders of No.25

17. The Applicant claimed the same service charges from Alan and Delia Roper (as former leaseholders of No.25) and from Mr and Mrs Arnold (as the current leaseholders). The parties had not produced a copy of the lease of No.25, so we proposed to proceed on the basis it had been granted before 1996; this was not disputed. Mrs Sharma said it had been granted in about May 1991. Accordingly, we proceed on the basis that it is an "old lease" for the purposes of the Landlord and Tenant (Covenants) Act 1995 (the "**1995 Act**"), in the same relevant terms as the other copy leases produced. Alan Roper said his company (Wherry Publishing Limited) had purchased the lease in about 2005 and that company changed its name (to Adur Services Limited) in 2009. He thought the company had not transferred the lease into their personal names until a few weeks before they sold it to Mr and Mrs Arnold in July 2014.

18. On the evidence produced by the parties, which included an extract from Land Registry entries dated 22 June 2012 naming Alan Walter Roper and Delia Roper as the proprietors, we are satisfied that the lease was transferred to Mr and Mrs Roper on or before 22 June 2012 and they held it until Mr and Mrs Arnold purchased the lease from them in July 2014. Alan Roper had suggested in contemporaneous correspondence that the sale exchanged and completed on 4 July 2014. Paul Roper confirmed at the hearing that the actual completion date was 9 July 2014.

19. The first on-account demand(s) for service charges may have been served while the company was still the leaseholder. However, those demands sought the wrong service charge proportions and nothing was paid towards the sums sought in those demands. In accordance with the terms of the lease, the demands relied upon by the Applicant were all made between December 2012 (in respect of the period from 1 July 2011 to 30 June 2012) and December 2013 (for the period from 1 July to 5 August 2012) and were for the relevant proportions of all the costs actually incurred.

20. Accordingly, at the hearing, we put it to the Applicant that it appeared the alleged breaches (failure to pay the relevant service charges) were complete before the assignment in July 2014 to Mr and Mrs Arnold. If so, even if this was an "old lease" for the purposes of the

1995 Act, under the long-established common law the assignees were not liable unless they had in some way agreed to become liable or the Applicant could explain some other basis on which they might be liable. The Applicant did not dispute the legal position, but Mrs Sharma contended at the hearing that the correspondence from the conveyancing solicitors acting for Mr and Mrs Arnold showed an intention to settle the service charges. This correspondence (in the Respondents' bundle) simply showed the conveyancing solicitors had been asking the Applicant to say what the outstanding balance was, had made a retention of £1,000 and had told the tribunal-appointed manager (not the Applicant) that once they heard from the Applicant they would arrange to have arrears settled; they still had no idea how much might be claimed because the Applicant had not told them. We are not satisfied this was communicated to the Applicant at the relevant time, or created any kind of binding commitment. After a long delay, the Applicant produced a very large demand, at least some of which does not appear to have been justified. Perhaps unsurprisingly, no further progress was made. On the case and evidence produced to us, we are satisfied that Mr and Mrs Arnold are not liable for any of the relevant service charges.

21. Messrs Roper could give no reason why Alan and Delia Roper were not liable for any service charges we determined to be payable in respect of the period we are concerned with, given the demands between December 2012 and December 2013. However, as explained in the Manager Decision [at paras. 27 to 29], they were concerned that when they sold the lease of No.18 the Applicant required (in addition to sums which appeared to relate to the service charges payable under the No.18 Decision and previous decisions, plus interest) a further £2,100 for "costs" and they had no option but to pay this so they did not lose the sale. As we said in the Manager Decision, the Applicant should have known it had no right to this £2,100. We had pointed out to Mr Sharma at the hearing in February 2021 resulting in the No.18 Decision that (in relation to an attempt to claim different fees as administration charges) we could see no provision in the lease for any such administration charges (i.e. as sums payable by a single leaseholder) and he had been unable to point us to any such provision.

22. At the hearing of this matter, Mr and Mrs Sharma said this figure was for actual legal costs they had incurred in seeking to recover service charges from Mr and Mrs Roper. The Applicant relied on the provision in paragraph 13 of Schedule 5 to the lease for legal costs and expenses to be recovered as part of the service charge. They produced no invoice or other contemporaneous evidence of any such costs. No such service charge costs had been claimed in respect of the relevant period in these proceedings, or in the proceedings which were concluded by the 2018 Decision (as part of which the Applicant had been required to specify all service charges sought from Mr Roper for the period to 5 August 2012). The relevant tribunal appointed new managers with effect from 6 August 2012.

23. Mr and Mrs Sharma explained no other grounds on which they could have been entitled to the additional £2,100. They helpfully accepted at the hearing that, if we decided the Applicant had not been entitled to the £2,100, it should be set off against any service charges we decided were otherwise payable by leaseholders of No.25 to determine the sum payable. On the case and evidence provided to us, we are satisfied that the Applicant was not entitled to the £2,100 and accordingly that figure is to be deducted from the service charges we determine to be payable in respect of No.25.

Major works invoices – 2013 Decision

24. In these proceedings, the Applicant claimed contributions towards third-party invoices paid for the start of the major works in the total sum of £92,646.64, comprised of:

(i) for 1 July 2011 to 30 June 2012, a total of £14,894.40 paid to Reynolds Jury Architecture ("**RJA**"), £1,012.02 paid to AMA Quantity Surveyors ("**AMA**") and £630 paid to DMA Health & Safety Ltd ("**DMA**") for CDM co-ordination services; and

(ii) for 1 July to 5 August 2012, a further £2,458.80 paid to RJA and a total of £73,651.42 paid to the roofing contractors, T.C. Garrett ("**TCG**").

25. The relevant tribunal had already determined in the 2012 Decision that these sums were reasonable and payable. From the Respondents, there was no dispute they had been reasonably incurred, or about the standard of the relevant works/services. However, the parties in effect sought to reopen the same questions as had been litigated in the earlier proceedings about whether the £119,870 (the residue from the previous major works fund) handed over to the Applicant in 2009, or any other sums, should be credited to any of the leaseholders, or more of this fund should be treated as having been held for the Applicant. We referred them to the direction in the 2013 Decision, as set out above, and observed no application had been made to the county court to determine that anyone was entitled to a different share of the fund.

26. The correspondence in the Respondents' bundle demonstrates that ultimately only £17,000 of the £119,870 had been handed over by the Applicant to the new managers, Messrs Maunder-Taylor, because the Applicant had used most of it to pay the initial major works invoices. As Michael Maunder-Taylor reported on 3 September 2012: "*Sonal [Sharma] has explained that LLSL have been paying TC Garrett from the £120,000 fund, as well as Reynolds Jury's fees, and there is little left*." Ultimately, on 10 July 2013, Mr Maunder-Taylor wrote: "*The sum I was transferred at handover was circa*

£17,000 after LLSL spent the remainder of the £119,870 on Reynold's Jury fees and TC Garrett's costs.. all lessees received a benefit from the full amount (£119,870) as it was spent on the major works, receipts have been provided to me and I am satisfied that it was spent appropriately, but Bruce and I have been directed by the LVT to apportion the remaining balance … (i.e. the £17,000) among all lessees according to their service charge percentages…".

27. It was put to Mr and Mrs Sharma that, on this evidence, it appeared each leaseholder should be treated as having paid their service charge proportion of the invoices from RJA and TCG. There was no suggestion any such invoices had been paid from any other source or had been incurred during earlier periods; on the contrary, the criticism of the Applicant in the earlier decisions referred to their failure to progress the major works until they were faced with applications in 2011/12 to appoint a manager. Mr Sharma helpfully confirmed that the AMA and DMA invoices had also been paid from the same fund which the Applicant had been holding. Mr Tearle had already pointed out this left some £10,000 from the £119,870 which could have been used to pay other sums now being claimed, but we are not prepared to speculate about that. On the evidence provided to us, particularly the contemporaneous comments from Mr Maunder-Taylor, this difference simply leaves enough of a margin for error for us to be confident that the £92,646.64 was probably paid from the £119,870 in respect of which the 2013 Decision had been made.

28. Mrs Sharma argued that Mr and Mrs Tearle could not have been entitled to the share directed in the 2013 Decision because they had not acquired their lease until 2008. As we explained, we would not seek to reopen the 2013 Decision. In any event, the bundle included evidence that when Mr and Mrs Tearle purchased their lease of No.30 from Nationwide in 2008, the lender paid £10,946.60 to the Applicant for ground rent, service charges and related costs and paid a further £15,331.67 to the then manager, Robert Wells, for the "*balance of phase 1 refurbishment and outstanding service charges*". The parties also accused each other (in effect) of double counting in relation to the fund. Mr Roper referred to a historical report which he said had indicated an additional sum, but again such arguments had been dealt with in the previous decisions and we doubt we would have been prepared to reopen them even if an adequate case and evidence had been provided in respect of the matters he mentioned.

29. Mrs Sharma argued adjustments had been made by the Maunder-Taylors so each leaseholder had already been given credit, in revised demands, for the payments which had been made from the £119,870 and the Applicant had paid a "huge amount" of money towards the major works. It was said that, if we treated the leaseholders as having paid the relevant sums we would be crediting them twice. We are satisfied that is not the case. Messrs Maunder-Taylor had naturally prepared their first demands in the expectation

they would need to collect and pay all the sums expected to be payable in relation to the major works. When it emerged some £90,000/£100,000 of those sums had already been paid by the Applicant from the old major works fund and £17,000 was handed over, and they received the 2013 Decision, they issued revised demands following that decision (on the balance of probabilities, we are satisfied that each leaseholder was treated as having paid their service charge proportion of the sums already paid and credited with their share of the £17,000), seeking the balance of the anticipated major works costs.

30. On the case and evidence produced by the parties, we are satisfied on the balance of probabilities that the relevant Respondents are to be treated as having paid their service charge proportion of the £92,646.64. We are not so satisfied in relation to any of the other sums claimed by the Applicant, including the relevant proportions of the major works management fee claimed by the Applicant (examined below). Accordingly, nothing further is payable by the Respondents in relation to the third-party major works costs claimed by the Applicant.

31. This finding is different from our determination in the No.18 Decision about these costs. In the proceedings which were concluded by the No.18 Decision, the applicant, Alan Roper, failed to comply with case management directions and failed to produce a bundle of the requisite documents, producing only two small bundles of generally unhelpful documents and leaving the Applicant to produce a substantive bundle for the hearing. In the current proceedings, Mr Tearle and the other Respondents explained the circumstances, made out the case and produced the evidence which Alan Roper had not in in his proceedings, particularly in relation to the correspondence and other evidence from Messrs Maunder-Taylor in 2012 and 2013.

Other sums claimed for 1 July 2011 to 30 June 2012

32. The other relevant costs claimed by the Applicant for this service charge year were in the total sum of £34,163.98, as listed for identification only in Schedule 1 to the No.18 Decision (total costs of £47,070.40 plus the £3,630 disallowed in that decision, less the sums paid to RJA, AMA and DMA as set out above). Of these, the Respondents disputed the following items and our assessment is as follows.

Disputed item	**Cost (£)**	**Decision**
Labour charges	60	We are satisfied this cost for Jack White to assist Paul Marsland to clear heavy items probably related to the common parts and was reasonably incurred.

Train travel for Jack White and Paul Marsland	96.70	The Respondents asked whether travel costs were recoverable under the terms of the leases. We are satisfied that, while these travel costs had been misdescribed by the Applicant, they were payable as costs and expenses under paragraph 13 of Schedule 5 to the leases and reasonably incurred.
Roy's of Wroxham	35.22	We are satisfied these costs for gloves, rat traps and the like probably related to the common parts and were reasonably incurred.
GPE removal of 16 tons inert material	190	We are satisfied these costs probably related to the common parts and were reasonably incurred. The Respondents told us they had photographs which did not show such a large volume of material left by the former contractors at the relevant time(s), but they had produced no such photographs in their bundle, merely asking whether this material had come from the Applicant's own flats.
Travel, lawnmower fuel and purchase S&M supplies for maintenance	99.60	Again, the Respondents' challenge was whether these travel costs were recoverable under the terms of the lease. We are satisfied they were.
Paul Marsland caretaker employee costs	8,925.08	The Respondents said a statement dated 28 December 2012 gave a lower figure, of £8,846.14 and asked whether any of these costs had been reimbursed by Purple Properties (local managers, used by Messrs Maunder-Taylor, who paid for services provided by Mr Marsland when he remained employed by the Applicant after the new managers were appointed from 6 August 2012). The Applicant said the difference had come from a small adjustment from HMRC which was accounted for after the 2012 statement. Mr Tearle pointed to different schedules from the Applicant with different dates and figures, suggesting these had been constructed by the Applicant and pointing to the lack of actual bank statements or the like in the bundles. On the evidence produced to us, we are satisfied that the £8,925.08 was reasonably incurred. The Respondents had in their schedule of disputed costs only identified a small difference, not alleged the figures were false. Purple

		Properties would probably only have reimbursed employee costs relating to the period from 6 August 2012 (as Mrs Sharma said) and the Respondents provided no contemporaneous evidence to suggest otherwise. Further, the figure claimed by the Applicant is included in an audit report signed by Barry Flack & Co Limited which states that these costs are sufficiently supported by accounts, receipts, vouchers and other documents.
Counsel's fee for opposing the first (unsuccessful) application made by leaseholders in 2011 for appointment of managers	2,160	Mr Tearle had read the reasons we gave in the No.18 Decision [at 27] for allowing this cost. He argued the first application to appoint managers had been unsuccessful on a "*technicality*" and pointed out the relevant tribunal would otherwise have been minded to appoint, given the failure to progress the outstanding major works and the other issues in relation to the Applicant, described in detail in the earlier decisions. We are satisfied this cost was reasonably incurred; the failure to give the preliminary notice meant the landlord did not have the requisite formal reasonable period in which to improve matters or otherwise respond before the hearing of the matter.
Counsel's fees for opposing the (successful) second application to appoint managers	**3,630**	This is the total of various invoices for Counsel's fees in relation to the second application, following the requisite preliminary notice. The reasons given by the Applicant for seeking these costs again in these proceedings were the same reasons as had been given in the proceedings concluded by the No.18 Decision. For the same reasons as given in the No. 18 Decision [at 28-29], in our assessment, these costs were not reasonably incurred.
Applicant's general management fee	3,500	This cost had been agreed by Alan Roper for the purposes of the No.18 Decision. In these proceedings, Mr Tearle pointed out there had been very little general management and referred to all the management failings described in previous decisions. He observed the management fee had been reduced to £1,800 in a previous decision and argued an hourly rate for a property manager would be in the region of £45. He accepted no comparable evidence of a market rate had been produced by the Respondents and when we suggested the

		market rate at the time was probably £200/£250 per flat, this was not contested. The £1,800 figure had been determined in a previous decision in view of the serious failures at that time to put measures in place to stop leaks from storm damage and the like. During the period we are concerned with, much of what the Applicant was doing was inadequate and some of the problems were of their own making. However, this was a difficult property and it was entitled to claim a reasonable management fee for the essential basic matters of arranging buildings insurance, employment administration, costs and risks in relation to Mr Marsland (who had been helpful at the time). Mrs Sharma had also spent time successfully claiming £558 from insurers to cover a cost for repairing some storm damage, one of the items noted in the list of costs and credits for this period. As has been explained in the past, general management fees are not assessed on an hourly rate basis. Even if we adopted Mr Tearle's hourly rate of £45, reasonable time spent was at least 2.5 hours per flat (of which there are 32) per year, which would be in line with the management fee claimed. In our assessment, it was reasonably incurred and is payable, even bearing in mind the small items which have been charged in addition to the management fee and might otherwise have been rolled up in it.
Barry Flack audit fee	240	This figure had already been determined in the 2012 Decision as part of the advance charges. Mr Tearle queried a lower figure of £120 in the statement from 28 December 2012. We are satisfied this was an interim figure. We are satisfied that the audit fee claimed was reasonably incurred and is payable.
Applicant's major works management fee	6,500	In the No.18 Decision [at 32], we noted that following discussion the claimed management fee of £8,200 had been reduced to and agreed at £6,500. Mr Tearle said that was still too high because previous documents indicated the Applicant would be charging 5% of the total major works costs. We are satisfied that the fee claimed was reasonably incurred and is payable. A substantial amount of work would have been needed, particularly in the early stages, liaising with the architects, attending

		meetings, dealing with the statutory consultation process, taking on contracts and so on. That is consistent with the volume of copy documents produced in relation to this period. The contracts were then taken away from the Applicant before substantial costs were paid under them, so limiting their fee to 5% would be artificial. Even if we look only at the £73,651.42 paid to TCG for the period to 5 August 2012, we are satisfied this fee is a reasonable proportion of that cost for the work which is likely to have been involved.

33. Accordingly, Counsel's fees of £3,630 are to be deducted from the total of £34,163.98. The balance of £30,533.98 is the total relevant cost in respect of which a service charge is payable for this service charge year.

Other sums claimed for 1 July to 5 August 2012

34. The other sums claimed by the Applicant for this balancing period totalled £3,080.14. The Respondents disputed each sum claimed, as set out below, and our assessment is as follows.

Disputed item	**Cost (£)**	**Notes**
Insurance	1,219.64	Mr Teale asked whether some of this cost had been reimbursed by Purple Properties. The Respondents produced no evidence to suggest it was. Mrs Sharma told us, and we accept, the only reimbursement from Purple Properties was for employment costs of Paul Marsland for periods after 6 August 2012 (when the Applicant retained him as an employee because the managers did not wish his employment to transfer to them).
Bank commission	5.50	Again, Mr Tearle said this figure had not been included in the statement from 28 December 2012. The Applicant had not provided copy bank statements, but we accept their evidence that this was a bank charge for the business bank accounts and was paid. We are satisfied on the balance of probabilities that this cost was reasonably incurred and is payable.
Counsel's fees for	**720**	For the reasons given in the No.18 Decision [at 36], we disallowed this cost. In these

submissions in relation to the terms of the management order		proceedings, the Applicant relied on the same arguments, but also argued submissions had been made to safeguard the new major works contracts. We asked about this at the hearing. Mr Sharma accepted that in part the submissions had been made for the protection of the Applicant's own interests, but said they were also made to avoid problems with the major works contracts. The documents include indications that the architects and contractors were ready to work with the proposed managers, if appointed. Copies of the submissions made by the Applicant's counsel had not been provided in the bundles and nor had a copy of the management order made in 2012. On the evidence produced, and in view of the £650 handover fee we have allowed below, we are not satisfied that any part of these fees were reasonably incurred as service charge costs.
Fees for transfer of management	650	Mr Tearle insisted this fee was too high, having focussed on a reference to the work having been charged as at least five hours' work at £150 per hour. The Applicant was not entitled to charge such a high hourly rate for the work it did here, but in view of the amount of practical work needed, as outlined in the No.18 Decision [at 37], we are satisfied this fee was reasonably incurred and is payable. Handing over a volume of documents in relation to major works and accounts, dealing with enquiries from the suppliers, the new managers and so on would have taken far more than five hours. Such time is valuable to enable the new managers to work more effectively, particularly when taking over in the middle of a major works project.
Management fee	485	The No.18 Decision notes [at 38] that this figure had been agreed by the parties as a simple pro rata apportionment of the £3,500 general management fee for the previous service charge year. Mr Tearle said the apportionment calculation was wrong and the calculation should be to divide an annual fee (if any) by 365 and multiply it by 37 days for 1 July to 5 August 2012. None of the parties proposed any other calculation when asked to do so. In the circumstances, we are satisfied that the reasonably incurred and payable fee for this

		period was £355 as a pro rata apportionment of an annual fee of £3,500. We disallow the balance of £**130**.

Conclusion

35. Accordingly, Counsel's fees of £720, and the £130 adjustment to the management fee, are to be deducted from the total of £3,080.14. The balance of £2,230.14 is the total relevant cost in respect of which a service charge is payable for the period from 1 July to 5 August 2012.

S20C order, tribunal fees and costs

36. The Applicant resisted the making of a section 20C order and sought reimbursement of the tribunal fees they had paid. They sought costs from the Respondents, and vice versa. They pointed out the Respondents had failed to respond sensibly when the Applicant wrote in April 2021 following issue of the No.18 Decision to seek: (a) sums which they said had been determined in previous decisions for 2010 to 2011; (b) sums calculated on the same basis as the No.18 Decision for 2011 to 2012; and (c) contractual interest, warning they would start recovery proceedings if these were not paid. The Applicant had not taken action for a long time, but the Property and relationship had always been difficult. They had waited until June 2021 before starting these proceedings and the Respondents had answered with a large volume of material and issues, much of which could have been avoided or reduced.

37. Mr Tearle had already apologised for the volume of documents produced, while pointing out the leaseholders had all assumed the Applicant had written off these historic disputed claims. Alan Roper had to take action to arrive at a sensible figure so the lease of No.18 could be sold, but then he had not prepared his case adequately. When after so many years the Applicant then took these proceedings against the other "*independent*" leaseholders, they felt they had to explain all the history one last time and try to produce all the evidence which might be needed in relation to the major works charges. He submitted that, if the Respondents were successful in relation to the major works charges, the Applicant would have been acting unreasonably, since the bulk of the disputed charges had already been paid. Paul Roper referred to the distrust between the parties and the other matters which led the tribunal to extend the appointment of the manager, as explained in the Manager Decision.

38. We generally accept the submissions made by the Respondents about this. They should have responded more

constructively to the demands (and we comment on this further below). However, in all the circumstances, particularly given that the sums pursued by the Applicant this year were for periods more than nine years ago and (perhaps as a result of their own delay) forgot that much of the charges were to be treated as having been paid, we conclude each party should bear their own costs of these unfortunate proceedings. Accordingly, we have decided to make an order under section 20C of the 1985 Act. We do so purely on a contingency basis, since the Property is currently managed by the tribunal-appointed manager. It is just and equitable to make the order to ensure there will be no dispute about this in future. For the same reasons, we make no other order in respect of the tribunal fees or other costs of these proceedings.

Observations

39. We hope these are the last tribunal proceedings in relation to historical service charges at the Property. They certainly should be. It appears much of the sums now being claimed by the Applicant will be for compound contractual interest apparently payable under the leases because the Respondents have refused to make payments on account, even under protest, for such a long time, apparently hoping these claims or the Applicant might go away. We understand why the Respondents were suspicious and both parties have dragged up all their old grievances, concerns and arguments in these proceedings, forgetting that most of them have already been dealt with in previous decisions or are outside the jurisdiction of the tribunal, but this should be the end of the road.

40. The parties must take their own independent legal advice - we cannot advise them - but we suggest the Respondents move past their instinctive refusal to pay anything to the Applicant and pay the service charges we have determined as payable by each of them (set out in the table at the start of this decision), plus any interest payable (estimated in the table below), without delay.

41. Similarly, the Respondents may wish to consider paying at least whatever sums they believe were determined in previous decisions for the period from 2 October 2009 to 30 June 2011 plus any interest payable on those sums, unless they are advised they have a complete defence to any such claims. We cannot re-determine those sums or attempt to calculate such interest for them. As we pointed out at the hearing, it is striking that even the sums claimed by the Applicant to have been determined in those previous decisions (for leaseholders paying 2.8%) were "only" £356.20 for 2 October 2009 to 30 June 2010 (leaving a balance of **£168.70** after the acknowledged on-account payment of £187.50) and **£673.34** for 1 July 2010 to 30 June 2011. Mrs Tearle's comments about (unless advised otherwise) making appropriate payments and drawing a line under this seemed to us to be wise.

42. As requested, the tribunal has sought to calculate approximate contractual interest on the sums we have determined in this decision for 1 July 2011 to 5 August 2012, in an attempt to help the parties to draw a line under historic matters. This interest has been calculated by reference to clause 2(14) of the lease, which provides that, if demanded, the leaseholder shall pay interest on any overdue payment at the rate of 5% over the base rate of National Westminster Bank PLC, such interest to be capitalised quarterly. For the purposes of this informal estimate, we have assumed the same payment periods as in the No.18 Decision.

Amount/period	**Interest (£) to 11 November 2021**
£854.95 from 12 January 2013 (2.8%)	534.96
£1,068.69 from 12 January 2013 (3.5%)	668.70
£62.44 from 20 January 2013 (2.8%)	39.07
£78.05 from 20 January 2013 (3.5%)	48.84

43. However, as noted above, these calculations cannot be relied upon. We make no determination of any interest payable because in these proceedings we do not have jurisdiction to do so. The parties must take independent legal advice and rely on their own interest calculations.

Name: Judge David Wyatt **Date:** 20 December 2021

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.