FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2021/01296**
Property	:	**Princes Court, 88 Brompton Road, London SW3 1ES**
Applicants	:	**Fidele Di Maggio and other listed members of the Princes Court Leaseholder Association**
Representative	:	**Brecher LLP**
Respondent	:	**Itemtrump Ltd**
Representative	:	**PDC Law**
Type of Application	:	**Payability of service charges**
Tribunal	:	**Judge Nicol** **Mr C Gowman MCIEH**
Date and Venue of Hearing	:	**14th and 15th February 2022;** **By video conference**
Date of Decision	:	**18th February 2022**

DECISION

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1) The service charges challenged in these proceedings are reasonable and payable, save that charges arising from the 2-year contract with Southern Drains is limited in the first year to £100 for each Applicant.

2) The Applicant has applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 limiting the costs of these proceedings which the Respondent may recover. The Tribunal makes the following directions for the determination in relation to costs:

(a) The Applicants shall, by **4th March 2022** notify the Respondent and the Tribunal whether they still wish to seek such orders.
(b) If the Applicants so notify that they do wish to proceed, they shall further, by **18th March 2022**, file with the Tribunal and serve on the Respondent written submissions in support.
(c) The Respondent shall, by **1st April 2022**, file with the Tribunal and serve on the Applicants any written submissions in response to those of the Applicants.
(d) The Tribunal will, thereafter, make a decision on the papers as soon as practicable and send it out to the parties.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. Princes Court is a large mansion block located opposite the famous London store, Harrods. There are 91 flats on the second to tenth floors, the whole of which is leased by the freeholder, Novel Property Investments Ltd, to the Respondent. The lower floors are let by the freeholder to commercial tenants (although some units are currently empty).

2. The Respondent has let the flats on long leases and the Applicants are a majority of the lessees and members of the Residents' Association.

3. On 26th August 2021 the Applicants applied to the Tribunal for a determination of the reasonableness and payability of service charges levied by the Respondent in accordance with section 27A of the Landlord and Tenant Act 1985.

4. The application was listed for 4 days on 14th-17th February 2022 but the hearing was completed within the first two days. The attendees were:

- Ms Diane Doliveux, counsel for the Applicants;
- Ms Caroline Howard of the Applicants' solicitors, Brecher;
- Mr Fidele Di Maggio, the lead Applicant;
- Mrs Fiona Docherty, managing director of James Andrew Residential Ltd, formerly the Respondent's agents;
- Mr Jonathan Upton, counsel for the Respondent;
- Mr Timothy Darwall-Smith, director of the agents, Sandrove Brahams & Associates Ltd (trading as SBA Property Management), for both the freeholder and the Respondent;
- Mr Paul Brett of Penhurst Insurance Services Ltd; and
- Mr I Edipidis, observing on behalf of the freeholder.

5. The documents in front of the Tribunal consisted of:

- A paginated hearing bundle split into 8 separate parts, with a total of 3015 pages; and
- Skeleton Arguments from each counsel and a joint bundle of authorities.

6. The eighth part of the bundle consisted of an application by the Applicants to admit an expert report dated 4th February 2022 from Mr Shaun Harris and a witness statement dated 8th February 2022 from Mrs Docherty. The Applicants did not press the admission of the report and reserved their position as it relates principally to the roof and a major works programme has only just started on the roof.

7. In relation to Mrs Docherty's witness statement, it was way out of the time allowed in the Tribunal's directions and so close to the hearing that the Respondent had insufficient time to address it. There was no reason that the statement could not have been compiled in good time. Therefore, the Tribunal decided to exclude it. Since this was the only witness statement from Mrs Docherty in these proceedings, the Applicants were also unable to call her as a witness.

8. Mrs Docherty's witness statement purported to exhibit 6 documents. Witness statements prepared for trial should not normally have exhibits. The Tribunal considered them separately and decided to allow them all in. Three were already in the bundle, the Respondent had no objection to another of them and the last two were documents previously exchanged between the parties. In the event, none of the additional documents were referred to during the hearing.

Issues

9. The parties had exchanged statements of case, including a Scott Schedule listing the Applicants' objections to various items of expenditure for the years 2016-2020 and various items budgeted for 2021. The main issue has remained throughout that of the apportionment of some of those items between the residential lessees on the one hand and the commercial tenants on the other. However, in the Scott Schedule the Applicants expressly conceded the payability of service charges based on expenditure in the following categories:

    (a) Estate Manager;
    (b) Estate Manager costs;
    (c) Entryphone/CCTV;
    (d) Cleaning, save for the cleaning of the roof (see further below);
    (e) Rubbish prior year end adjustment (2016);
    (f) Pest Control;
    (g) Lighting Repairs and Maintenance;
    (h) Engineering Insurance;
    (i) Electricity, other than that relating to advertising hoarding; and
    (j) Fire Compliance (2018).

10. In her Skeleton Argument at paragraph 12, Ms Doliveux set out 10 issues she said the Applicants wanted a determination on other than the apportionment issue. Mr Upton conceded that the first, accountants' fees, had been pleaded properly in advance but asserted that the rest had all been brought in no earlier than the Applicants' Reply dated 27th January 2022, in breach of the Tribunal's directions

and too late for a fair opportunity to address them properly. These issues were addressed as follows:

(a) Bins and rubbish. In the original Scott Schedule, the Applicants challenged the charges in this category solely on the basis of apportionment between the residential and commercial tenants. In additional comments in the amended Scott Schedule served with the Reply, they sought to bring in new issues of their rubbish removal being covered by their Council Tax and the costs being excessive. In an amendment made to the Tribunal's directions on 1st December 2021, Judge Nicol had pointed out that the Reply was not an opportunity for an additional full statement of case. In the event, the new issues were brought in too late for the Respondent to have a fair opportunity to address them and the Tribunal decided that they would have to be excluded.
(b) Internal repair costs. Mr Upton submitted that the challenge to this item was similarly late but, in fact, the Applicants had asked in the original Scott Schedule for details of insurance claims made to cover some of these costs, effectively putting the Respondent to proof of such matters. Therefore, this item was considered by the Tribunal.
(c) Water charges. Ms Doliveux conceded that this item was no longer challenged.
(d) Heating repairs and maintenance for 2019-20. The Applicants had asserted in the original Scott Schedule that the statutory consultation requirements applied but had not been complied with and the costs were excessive. Therefore, these matters had been properly raised and the Tribunal considered them.
(e) Drain maintenance. For most years, the complaint in the original Scott Schedule was about apportionment but, for 2019, the Applicants made the same complaints about non-compliance with the statutory consultation requirements and excessive costs. The Tribunal considered these points.
(f) Electricity charges. In the original Scott Schedule, the Applicants asked whether the costs related to internal or external electricity, merely clarifying in the amended Schedule that they wanted to know the source of the power for lighting on advertising hoardings permitted by the freeholder in front of the commercial premises on the outside of the building. The Tribunal considered this.
(g) Cleaning. The Applicants accepted the expenditure in this category save in respect of the roof. It only became apparent at the hearing that their objection was to the lack of contribution from mobile phone companies who had licences from the freeholder to place aerials on the roof. The Tribunal excluded this item on the basis that it was too late. In the event, Ms Doliveux did ask questions in cross-examination and made submissions on this issue and pointed out the aerials during Judge Nicol's inspection of the roof. The Tribunal has commented further below.
(h) Roller shutter repairs/major works. Ms Doliveux did not seek to pursue this category other than as an example of the apportionment issue.

(i) External repairs in 2021. Ms Doliveux also did not seek to pursue this item on the basis that it was so far only budgeted and the Applicants would have an opportunity to challenge the actual costs in due course.

Inspection

11. One member of the Tribunal, Mr Gowman had inspected the subject property as a member of the Tribunal which heard a previous dispute in 2014. The documents before the Tribunal also included plans and photographs of the building and various areas within it, particularly the roof. The Tribunal was dubious of the need to inspect but Ms Doliveux was clear that the Applicants very much wanted an inspection to take place as had been planned in the Tribunal's directions.

12. The parties agreed that Judge Nicol would proceed with an inspection without Mr Gowman on the morning of 16th February 2022. Mr Darwall-Smith acted as guide, assisted by the Estate Manager, Mr El Gogary, and Mr Nick Judd from the contractors who have recently started the major works programme on the roof. Both counsel and Mrs Docherty also attended.

13. The residential parts of the building are arranged in a C-shape on the second to ninth floors, with one former store cupboard converted into a flat on the tenth floor (there are similar converted store cupboards on other floors as well). They are accessed through a main door on Brompton Road, via an entryphone system activated by a fob, into a large lobby and, from there, two lifts and a stairwell. There is a staffed reception desk in the lobby.

14. There is currently scaffolding the full length of the building in front of the commercial premises on the ground and first floors, hidden by advertising hoardings. The scaffolding then extends to the roof up the walls facing each other in the C-shape. The roof has extensive ponding and the surface has a sponginess which suggests significant amounts of water underneath. There are 3 "pods" or small buildings connected to the mobile phone aerials which are either wall-mounted or, in one case, resting on a temporary stand.

15. The interior common parts are clean but in need of re-decoration in parts, particularly the stairwell where cills, skirting and radiators have peeling paint. Judge Nicol was also shown the rear and basement service areas, including the tank room, the communal boilers, the electrical intakes and staff toilets. He was also taken into one of the first floor commercial units, currently empty, from which the lighting to the hoardings is powered and the energy use metered.

Apportionment

16. The Respondent's lease from the freeholder contains the following provisions:

- The Respondent's covenants as lessee are in clause 2, including to paint, repair and insure the demised premises.
- Clause 2 also includes obligations to supply heat to the commercial premises and pay two-thirds of the cost incurred by the freeholder in repairing the structure of the building which is not demised.
- The freeholder's covenants as lessor are in clause 3, including to insure and repair the retained areas.
- Clause 3(c) provides for the freeholder to pay 33.3% of the cost of heating provided to the whole Building by the Respondent.
- The Schedule to the lease, together with attached plans, defines the Respondent's demise, namely "the residential part of the Building … comprising the second to ninth floors inclusive and parts of the ground floor, first floor and basement thereof … including the exterior thereof and the roof, the structure and the foundations thereof and the lifts boilers and central heating system".

17. The Tribunal was also provided with a deed of variation but its terms, relating to the right of the freeholder to run an air-conditioning unit on the roof, do not appear relevant to the current dispute.

18. The lessees of the residential flats apparently have one of three different leases but the parties are agreed that the service charge provisions are identical (save that the proportions each pay vary, with the largest being 1.5%). The Tribunal was shown a sample lease from Flat 48, the service charge proportion for which is 0.9%. The lease contains the following provisions:

- By paragraph 17 of the Sixth Schedule, the lessee pays a service charge in respect of expenses incurred by the Respondent under the Seventh and Ninth Schedules.
- In the Seventh Schedule, the Respondent covenanted to provide various services such as employing staff and professionals, maintaining a hot water supply and, in paragraph 2, keeping "the Reserved Property" in repair, decoration and use.
- The Reserved Property is defined in the Second Schedule as the common parts of "the Property".
- The Property is defined in the First Schedule as the "self-contained flats as the same are held" under the Respondent's lease.

19. Despite the structure of the Respondent's lease, it is not possible to separate the residential parts of the building from the commercial parts for all purposes. It is obvious just from looking at the building that they are parts of the whole. For this reason, some services have been supplied to the whole building rather than just to the residential or commercial parts, including the following listed in Mr Upton's Skeleton Argument:

(i) Buildings insurance
(ii) Cleaning of roof
(iii) Bins & Refuse Removal
(iv) Building Repairs

(v) Roller shutter
(vi) Drain Maintenance & Repair
(vii) Fire Regulations
(viii) Fire Equipment/Sprinkler
(ix) External Repairs/Refurbishment (2018 & 2019)
(x) Professional fees (2018)
(xi) Major Works roof (2021)

20. However, the residential lessees are only liable for the expenditure set out in their lease which does not include contributing to the costs of services to the commercial parts. Therefore, expenditure on services to the whole building must be apportioned between the residential and commercial parts.

21. This issue first came before the Tribunal in 2014 when the then chair of the Princes Court Leaseholder Association, Dr Tienaz, brought an application together with fellow members of the association against the Respondent challenging certain service charges for the years 2007-2014 (case reference: LON/00BK/LSC/2014/0028). The decision noted in paragraph 4, "One of the main areas of concern was the distribution of expense between the residential and commercial elements in the building."

22. The Tribunal in 2014 heard evidence from Mr Darwall-Smith, whose firm took over management in 2013, and Mrs Docherty, whose firm had been the agents from 2007 until 2013. Both of them, and the Tribunal, considered apportionment in relation to various categories of expenditure on the basis of whether the services in question were available to, used for or by or benefitted the residential lessees or commercial tenants. No-one suggested using any other method of apportionment. As well as deciding what amounts were payable for other charges, the Tribunal concluded that the following apportionments were appropriate:

(a) Security costs:	10% commercial, 90% residential
(b) Staffing costs:	18%-82%
(c) Office management expenses:	18%-82%
(d) Electricity:	15%-85%
(e) General repairs and maintenance:	20%-80%
(f) Health & safety	20%-80%
(g) Office costs	25%-75%

23. Since that decision was issued, the current Applicants became aware of a report produced on 15th October 2012 by Ringley Ltd, chartered surveyors, for the purposes of a possible Right to Manage claim. The report asserted that the floor area of the commercial parts constituted 35-37% of the whole. This motivated the Applicants to assert that the apportionment between the commercial and residential parts should match their relative floor areas.

24. There are numerous problems with the Applicants' assertion:

(a) The Ringley report is 10 years old and was prepared for an entirely different purpose – the calculation of floor area for the purposes of Right to Manage does not include all common parts.
(b) The Applicants did not seek, let alone obtain, any permission for an expert report, leaving them without any evidence of what the respective floor areas actually are.
(c) The Applicants had no principled basis on which to prefer their method of apportionment over the one used to date and exemplified in the previous Tribunal decision.
(d) The Applicants tried to assert that using floor area would be "fairer". Although using floor area would arguably be simpler, more objective and more transparent, there seems to be no reason to think it would necessarily be fairer. Fairness would be coincidental rather than an intentional outcome. It is worth noting that the method used by Ms Doliveux to measure fairness was the same availability, use and benefit approach already used. Also, the same argument could have been raised in the previous Tribunal proceedings but no-one thought to do so.
(e) The Applicants pointed to the two-thirds and 33.3% splits provided for in the head lease (paragraph 16 above) but were unable to explain why this approach should be transposed to all other relevant charges. If the authors of the leases had wanted to apply the same approach in relation to other services, they could have done so.

25. The only governing principle as to apportionment which may be gleaned from the leases is that the residential lessees should pay no more than the costs attributable to the Respondent's part of the building. Concepts like "fairness" may be misleading in this context. A case-by-case assessment of which costs are so attributable seems like the only lawful method. This is not changed by the fact that some matters, such as buildings insurance, will be very difficult to apportion accurately. Mr Darwall-Smith has used his professional judgment, based on years of property management experience, including in relation to this particular building, to arrive at apportionments which are rational. It is notable that a previous Tribunal arrived at similar conclusions.

26. In this case, the Applicants did not seek to assert that a proper application of a test of availability, use and benefit should actually produce apportionments different from those used by the Respondent. Therefore, the Tribunal did not consider whether the apportionments should be changed other than by switching to using relative floor areas, save in one aspect.

27. The Respondent has previously split the costs of works to the roof or the exterior of the residential parts with 20% to the commercial premises and 80% to the residential premises. The budget for the roof works which have just started was estimated on that basis. However, as Mr Upton has submitted, it would appear, according to the leases, that such works should be charged 100% to the residential lessees since these areas are exclusively within the Respondent's demise.

28. Ms Doliveux protested that the Tribunal should not make a binding decision on this issue as the Applicants had not had sufficient notice of it. That is not how the Tribunal reads the Respondent's statement of case but, in any event, as Mr Upton also pointed out, the exercise the Tribunal is carrying out is to determine the payability of certain service charges. The Tribunal has no power to make declarations about the interpretation of the leases. The only challenge to most of the charges is that a different method of apportionment should be used and that is rejected, leaving the relevant charges as payable. That the Respondent has only charged 80% of what they think the Applicants are liable for supports that conclusion but it is not necessary in this context to decide whether the Respondent could have charged more than they actually did.

Accountancy fees

29. The Respondents have incurred the following fees for accountancy services:

- 2016 £8,066
- 2017 £8,244
- 2018 £9,340
- 2019 £9,240
- 2020 £6,800

30. The amount budgeted for 2021 was £9,000.

31. The Applicants argued that these sums were excessive. They relied on a brief email dated 11th November 2021 from Mr Mohamed Merali of AVS Consulting chartered certified accountants. Mr Merali said his firm would charge between £2,500 for the 2016 accounts to £3,000 for the 2021 accounts, all inclusive of VAT, based on the total expenditure in each year's service charge accounts.

32. Mr Merali's quote is virtually useless. He gives no detail of his qualifications or his or his firm's services and gives the impression that he neither knows nor cares about the circumstances of this particular building and any particular requirements or issues in relation to preparing the service charge accounts. It is clear to the Tribunal that the subject property is a complex building liable to give rise to accountancy work over and above what would be expected just working from the total service charge expenditure. The Tribunal has no choice but to disregard it as any sort of genuinely comparative quote.

33. Mr Darwall-Smith explained that he had tendered the accountancy work twice during the period in question. Ben Dinwiddie & Co were the accountants for about 4 years before the current accountants, Trevor Jones & Partners Ltd, took over in 2019. Ms Doliveux sought to criticise this on the basis that more frequent market-testing was required to ensure best value. However, as Mr Darwall-Smith explained, there is also a significant value to continuity of service. Each accountant has

had the opportunity to get to know the property, which knowledge would be lost by changing more often.

34. The fees were calculated on an hourly rate. Ms Doliveux put to Mr Darwall-Smith that a fixed fee, such as that offered by Mr Merali, would provide better value. Mr Darwall-Smith doubted this and suggested that such a fixed fee would have to be set at a high rate or supplemented by further fees if and when an accountant got to know better what work was required for this property. The fact is that the fees reflect the hours a reputable and experienced accountant said he spent on the accounts and there is no reason to doubt this. Mr Darwall-Smith explained some of the factors which have led to fees higher than would have been expected, including in one year substantial work on liaising with an accountant appointed by the lessees to check on the accounts and whose fees the then chair of the Leaseholder Association agreed should also be put through the service charges.

35. When cross-examing Mr Darwall-Smith about heating repairs and maintenance, Ms Doliveux came across an invoice dated 27th November 2019 for £27,000 plus VAT from Hodgson & Regan Maintenance Ltd which purported to be for annual maintenance. In fact, the Respondent has contracted with Hodgson & Regan to provide maintenance of the plant and machinery for the supply of heating and hot water at an annual cost of £12,504, inclusive of VAT.

36. Ms Doliveux submitted that the fact that this invoice existed was proof in itself that the accountants were not doing their job in that they should have queried it. Quite apart from the fact that the standard of the accountants' work had not been pleaded as a ground of challenge to this expenditure, her logic is faulty. She has no idea whether or not the accountants queried it or, if they did, what answer they got at the time. Mr Darwall-Smith explained that the description in the invoice was an error and that the invoice was for other legitimate work carried out by the same contractor. The Tribunal is not clear what Ms Doliveux thinks the accountants should have done – it is a legitimate invoice for legitimate work for which the Respondent is liable to pay and which has been properly included as an item in the service charges.

Internal repair costs

37. Some of the invoices for internal repairs referred to leaks coming from within particular flats. The Applicants' queried whether the costs of remedial works in each case should fall on the lessees of the particular flats rather than the service charges.

38. Mr Darwall-Smith was an impressive witness before the Tribunal. Although, unsurprisingly, he was unable to recall some details off the top of his head without the assistance of contemporaneous documents from his files, he was generally on top of his brief and was able to explain his decisions clearly and rationally. The Tribunal agrees with the previous Tribunal that this appears to be a well-run building. In

these circumstances, it would be extremely surprising if the agents had made such a fundamental mistake of attributing costs payable by one lessee to the service charges. They have no motive for benefitting one lessee at the expense of all the others.

39. Therefore, it was not a surprise at all that Mr Darwall-Smith was able to explain what appeared on the face of the invoices. Communal pipes within the building sometimes pass through the demise of an individual flat. When those pipes leak, causing damage, or require repair, then the resulting expenditure is, of course, a cost to the service charges, not to the lessee of the particular flat.

40. When the cost of such expenditure can be claimed on the buildings insurance, then the agents should make such claims. The Respondent produced spreadsheets showing the insurance payouts for each year (albeit that one year was omitted from the hearing bundle and had to be provided overnight between the two hearing days). Ms Doliveux fished around in her cross-examination for some basis on which to criticise the insurance claims, including whether the work had been tendered or the payouts duly credited to the service charge accounts. However, the fact is that the Applicants could put forward no positive case in support of any such allegations. Mr Darwall-Smith explained that work was tendered, either by him or by a loss adjuster, if one had been appointed, and there is no reason to believe that each claim was not managed and executed properly.

41. The Applicants were unable to establish any reason for thinking that the charges for internal repair works might not be payable. There is no burden of proof on such issues but it is incumbent on the Applicants to put forward some form of positive case which the Respondent then needs to address. Instead, the Applicants' approach was to see if they could pick out apparent discrepancies from amongst all the documentation and then criticise the answers for allegedly not being sufficiently comprehensive. It is notable that the previous Tribunal commented on how surprising they found the Applicants' lack of witness or other evidence which the current Tribunal can only echo.

42. In the circumstances, the Tribunal is satisfied that the service charges arising from internal repair works are payable.

Heating repairs and maintenance for 2019-20

43. As Judge Nicol observed on inspection, there is plant and machinery in the basement, including 6 boilers, supplying heating and hot and cold water to the residential parts of the building – despite the terms of the head lease, this heating does not go to the commercial premises. The Respondent incurred the following costs for the repair and maintenance of this plant and machinery:

- 2019 £72,783
- 2020 £75,792

44. The Respondent has contracted with Hodgson & Regan Maintenance Ltd to provide maintenance of this plant and machinery at an annual cost of £12,504, inclusive of VAT, which is included in the above figures.

45. The lessee paying the highest contribution of 1.5% would pay a service charge of more than £100 if the expenditure on one item of work were at least £6,666.67 and one of more than £250 if the expenditure were at least £16,666.67 – these figures engage the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

46. Since the contract with Hodgson & Regan is more than the lower of these thresholds and has lasted more than a year, Ms Doliveux sought to assert that the contract was a Qualifying Long-Term Agreement within the meaning of the statutory provisions and the Respondent was at fault for not consulting the lessees before awarding the contract.

47. However, the consultation requirements do not apply to a contract simply because it happens to carry on for longer than the requisite period of 12 months. The contract must be known from the start as one which will last for at least that time. In fact, this contract was subject to a term that it could be terminated on 3 months' notice ahead of the 12-month anniversary. Therefore, it does not satisfy the definition of a QLTA and no consultation was required.

48. In relation to the aforementioned invoice dated 27th November 2019 from Hodgson & Regan, Ms Doliveux submitted the following:

    (a) She argued that, since the invoice purported to be for annual maintenance, it was £20,496 too high (£33,000 - £12,504) and that amount should be re-credited to the service charge account. As already mentioned, the invoice description was an error. This was a legitimate bill, just for work other than that referred to on the face of the invoice.
    (b) She then argued that this amount engaged the statutory consultation requirements. Mr Darwall-Smith explained that the bill was for a number of separate items of work, billed together, and Hodgson & Regan had carried out no works programmes sufficiently expensive to require consultation.

49. For 2019, Ms Doliveux accepted that the invoices provided in the hearing bundle added up to the total sum claimed for that year. However, for 2020 she said they did not. She initially claimed that they only added up to around £16,000 which would have resulted in a shortfall of around £69,000 when compared with the total sum in the accounts. A quick glance at the invoices showed that this could not be right so Ms Doliveux re-calculated and claimed that the shortfall was around £10,000.

50. Ms Doliveux queried the shortfall with Mr Darwall-Smith. He was clearly surprised. He said that the invoices must be missing, for which

he apologised, and asserted that the accountants would not have signed off on the total figure unless there had been sufficient invoices to support it.

51. When faced with such a shortfall in the evidence before it, the Tribunal is not necessarily obliged to conclude that the expenditure should be limited to the amount in the invoices. The Tribunal is not carrying out its own accounting exercise but, rather, deciding on the evidence before it whether the service charges arising from the expenditure are payable. Evidence may be missing for many reasons, some of which may call into question the accuracy of the service charge accounts. On other occasions, the surrounding circumstances may provide sufficient evidence that the accounts are accurate despite the missing evidence. The Tribunal may use its common sense, informed by its specialist knowledge and experience, when assessing such evidence.

52. As already mentioned, the Tribunal was impressed with Mr Darwall-Smith as a witness and believes that the building is well-managed. On balance, the Tribunal finds that the more likely explanation for the missing invoices is an oversight in the preparation of the hearing bundle, rather than that they do not exist. The Tribunal is satisfied that the total sum in the accounts, as set out above, is accurate.

Drains maintenance for 2019

53. The Respondent had three contracts with Southern Drains for the maintenance of the drains at the property:

(a) A contract for a 6-monthly stack-pipe clean at a cost of £576 each;
(b) A 2-year contract for a 6-monthly full drain clean at a cost of £4,080 each – this contract was terminated after 18 months and there are no other contracts of a duration of 12 months or more;
(c) A contract for the annual maintenance of access points at a cost of £408.

54. Mr Darwall-Smith admitted that the 2-year contract engaged the statutory consultation requirements. For a lessee contributing 1.5%, the charge for the first year of the contract would have been £122.40, which is £22.40 more than the £100 limit for QLTAs. A lessee contributing 1.25% would also have paid £2 over the limit.

55. Mr Darwall-Smith apologised for the oversight which resulted in the lack of consultation. The Respondent might have had a compelling case for being granted dispensation under section 20ZA of the Landlord and Tenant Act 1985 as it is unlikely those affected could have shown any prejudice from a £22.40 overcharge and the cost of consultation may have exceeded any benefit, but they did not apply for dispensation.

56. Therefore, the failure to consult means that the amount that the Respondent may charge each Applicant in respect of the first year of the 2-year contract is limited to £100. The majority would have paid less than that but those whose charge was higher are entitled to a payment

or credit equal to the overcharge. Aside from this, the service charges arising from the expenditure on drains maintenance are payable.

Electricity

57. The Applicants' only objection to the electricity charges is the possibility that the lights on the advertising hoardings over the first floor of the front of the building may have been powered by electricity paid for by the lessees. It is not clear why they thought this might be a possibility. Again, the Respondent has no motive to mis-allocate the cost and it seems unlikely that such an obvious error might have been made given that this property is well-managed.

58. In any event, Mr Darwall-Smith was able to show Judge Nicol on inspection the supply and metering of the electricity, from an empty commercial unit currently and, before that, from a now redundant meter in the area behind the reception desk in the lobby. The Tribunal is satisfied that the Applicants were not charged for electricity powering the lights on the hoardings.

Roof cleaning

59. The Applicants' complaints about the roof cleaning seemed to suffer from the same problems as with most of the other categories. Using *a priori* reasoning, they came up with an objection to the service charge with had a degree of plausibility in the absence of any response from the Respondent. In this case, it was that there were aerials on the roof which might give rise to additional cleaning or repair requirements for which the owners of the aerials should pay by way of contribution to the service charge. The Applicants came up with no evidence of their own, not even of such questions being raised in correspondence before the issue of proceedings – most lessees try, as they ought, to get answers to their questions before resorting to litigation. Instead, they sought to make their case by picking holes in answers given in cross-examination.

60. Mr Darwall-Smith was able to give credible evidence that the aerials did not result in increased cleaning or repair costs to the roof. Mr Upton pointed out that the Respondent is entitled to let out roof space in this way to its own profit.

61. As Ms Doliveux pointed out, the fact that the Leaseholder Association has twice resorted to the Tribunal demonstrates a degree of dissatisfaction with the management of their building. However, it requires proper evidence to establish that such dissatisfaction has any real basis. If the Applicants were to consider coming to the Tribunal again, they would be well-advised to employ lawyers at an early stage, well before the issue of proceedings, and to do their best to obtain answers to their queries without resorting to litigation as far as possible.

Conclusion

62. Aside from a minor overcharge in relation to one drains contract in respect of which the Respondent failed to comply with the consultation requirements, the Tribunal has rejected all the points pressed by the Applicants to the hearing of their application. Therefore, the Tribunal is satisfied that all the charges which were disputed are payable.

Costs

63. The Applicants sought orders under section 20C of the Act and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 that the Respondents may not add their costs of these proceedings to the service charges or bill them to individual lessees. If they still wish to obtain such orders, the parties should comply with the directions set out at the start of this decision and the Tribunal will decide the issue on the papers, without a further hearing.

Name: Judge Nicol **Date:** 18th February 2022

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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
   (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
   (aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

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

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

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

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

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