FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	BIR/00CN/LIS/2021/0041-44
Property	**:**	93, 95, 103 and 104 Rupert Street, Nechells, Birmingham B7 5DS
Applicants	**:**	Sycamore Management (Nechells) No. 1 Ltd
Representative	**:**	Mr Mark Strangward
Respondent	**:**	Mr Foziur Raza
Type of Application	**:**	An application under section 27A of the Landlord and Tenant Act 1985 for the determination of the payability and reasonableness of service charges in respect of the subject properties
Tribunal Members	**:**	Judge David R Salter (Chairman) Mr David Satchwell FRICS (Surveyor)
Date of Decision	**:**	**05 September 2022**

DECISION

Background

1 This is a decision made in relation to applications by Sycamore Management (Nechells) No.1 Ltd ('The Applicant') in relation to 93, 95, 103 and 104 Rupert Street, Nechells, Birmingham B7 5DS ('the subject properties') each of which are held by the Respondent on the terms of leases for 99 years that are identical in form and content, save for the service charge proportion payable in respect of 93 Rupert Street.

2 In the Applications, the Applicant seeks a determination by the Tribunal under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') of the payability and reasonableness of the quarter's estimated service charges for the period 1 October 2021 to 31 December 2021. This interim charge is based on the estimated service charge costs for the service charge year ending 30 September 2022, totalling £25,000.00 ('the estimated service charge').

3 The Applicant had sent invoices dated 17 September 2021 to the Respondent based on the service charge proportions attributable to each of the subject properties in the leases amounting to £525.00 for 93 and £500.00 for each of 95, 103 and 104. These sums have not been paid by the Respondent.

4 Initial Directions were issued by the Regional Judge on 16 November 2021. Principally, those Directions related to the processes associated with the preparation and submission of Statements of Case and related documents by the parties to the application. Hence, the Applicant was directed to send a statement of case setting out all matters of fact and law relied upon together with all relevant documents to the Tribunal (copy to the Respondent) by 1 December 2021. In turn, the Respondent was obliged by the Directions to submit a similarly configured Statement of Case and related documents to the Tribunal (copy to the Applicant) by 22 December 2021.

A further Direction providing for the consolidation of the applications with applications made by the Applicant in respect 98 and 98a Rupert Street relating to the same subject matter became redundant when the latter applications were subsequently withdrawn.

5 The consequent history of the applications relating to the subject properties is somewhat protracted, but, nevertheless, pertinent, as will be seen, to the Tribunal's deliberations and, consequently, worthy of recording, albeit briefly.

6 The Applicant submitted a Statement of Case dated 27 November 2021 together with a paginated bundle of supporting documents whilst the Respondent sought an extension of time within which to submit his Statement of Case. His request was granted and the deadline for submission was extended until 7 February 2022. On that date, the Respondent sent a series of e-mails with attachments which, collectively, constituted his Statement of Case. Hard copies were received by the Tribunal on 8 February 2022.

7 Following correspondence from the Respondent and a review of the case, a procedural judge was minded on 24 February 2022 to issue further Directions ('Directions No. 2'). After a recitation of the essence of the applications, the Directions proceeded as follows:

"***BACKGROUND***

The issues for the tribunal are:
(a) Whether the sum demanded is contractually due under the terms of the lease.
(b) Whether the sum demanded is greater than a reasonable estimate of the anticipated costs of the Applicant in relation to the services that it is contractually required to provide to the leaseholders for the period in question.

The Tribunal has no jurisdiction to determine issues concerning the running of the management company or disputes between the shareholders and the directors. Neither can the Tribunal provide advice to any party on the status of previous county court proceedings, or a tenant's liability for his predecessor's debts. The only determination that the Tribunal can make on this application is whether the amount of the interim service charge is reasonable, as provided by section 19(2) of the Landlord and Tenant Act 1985.

Site inspections are governed by Rule 21 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The Tribunal may inspect the property which is the subject of this application and any other property which may assist the Tribunal in determining this application. The Tribunal must however give reasonable written notice of the inspection arrangements and obtain the consent from the person in control of the property, to enter.

As this application concerns the estimated charges for the service charge ending on 30 September 2022, it is unlikely that an internal inspection of all the upper floor flats will assist in determining this application. It is not clear whether the interim charge includes provision for repairs of the roof, which is clearly a contentious issue. The Tribunal may therefore wish to inspect the roof if there is a safe and reasonable access to it. I therefore make the following additional Directions:

DIRECTIONS

*1) The Applicant must, no later than **11 March 2022**:*

(a) Confirm who the management board has appointed to represent the Applicant company in these proceedings and the role/position of that person in the company.
(b) File a supplemental statement confirming the basis upon which the heads of expenditure in the budget service charge for the year ending 30 September 2022, have been calculated.
(c) If the budget includes a sum for anticipated repairs to the roof, to confirm if the roof can be safely and reasonably accessed by the Tribunal when inspecting the site.

*2) The Respondent may, no later than **25 March 2022** file a supplemental statement in response to the Applicant's supplemental statement."*

The latter two paragraphs relating to inspection of properties and of the roof were prompted by the above-mentioned Respondent's correspondence.

8 The Applicant responded to the points raised in Directions No. 2 in a letter dated 9 March 2022. This was accompanied by a witness statement made by Mr Strangward. On 16 March 2022 and following the receipt of further correspondence from the Respondent, the procedural judge wrote to the parties, as follows, in terms that, *inter alia*, reminded the Respondent of his opportunity to file a supplemental statement by 25 March 2022 but also re-iterated the importance of complying with the Tribunal's Directions and re-emphasised that the only issue for determination by the Tribunal was the payability and reasonableness of the estimated service charge costs for the year ending 30 September 2022:

"…The Tribunal has received piecemeal correspondence from the Respondent on a number of issues concerning service charge demands and management company issues, that have no relevance to the issues before the Tribunal on this application.

The Respondent is once again reminded of the need to follow the Tribunal's Directions and refrain from making submissions in the form of piecemeal correspondence. The Respondent has been provided with an opportunity to make submissions by 25 March 2022, in the form of a supplemental statement, to which the Respondent can attach evidence which he believes may be relevant to the issues. Submissions made in correspondence with the Tribunal and the other party (or copied to the Tribunal) will not be put in the hearing bundle and will not therefore be considered by the Tribunal that determines this case

The Respondent is reminded that the only issue before the Tribunal on this application is determination of the payability and reasonableness of the estimated service charge costs for the year ending September 2022. The Tribunal will not therefore consider the reasonableness of any actual costs that may have been incurred.

The Tribunal cannot comment on demands and invoices that have been sent to the Respondent concerning outstanding service charges, or comment on management issues raised in the Respondent's emails of 8,9, 10 and 11 March 2022. Neither can the Tribunal provide advice to the Respondent on whether there are grounds to seek a tribunal appointed manager…

Inspection

It appears from the Applicant's statement that it may not be safe for the Tribunal or others to attempt to inspect external parts of the roof. The roof inspection will therefore be confined to inspecting the internal parts of the underside of the roof that are reasonably accessible."

9 The Respondent submitted a supplemental statement dated 25 March 2022 to the Tribunal together with a paginated bundle of documents.

10 A virtual Hearing took place on 22 April 2022. Initially, the Respondent had difficulty in establishing a connection and, thereafter, struggled to maintain a connection with the result that it became clear that the Respondent had been unable to follow much of Mr Strangward's opening statement. In these circumstances, the Tribunal decided to abort the Hearing and to start afresh with a face-to-face Hearing at a date to be agreed.

One consequence of the aborted Hearing was that it became apparent to the Tribunal from Mr Strangward's presentation that further evidence of a section 20 consultation relating to carrying out of works on the roof that had been undertaken by the Applicant was required. Accordingly, the Tribunal issued Directions No. 3 on 29 April 2022 in which the Applicant was directed to provide specified documentation relating to that consultation. The e-mail that accompanied these Directions stated clearly that no other evidence should be presented by the parties unless it was specifically requested by the Tribunal. In furtherance of these Directions, the Applicant submitted a paginated bundle of documents that was received by the Tribunal on 10 May 2022. Notwithstanding the Tribunal's explicit statement in the afore-mentioned e-mail as to the submission of any other evidence, the Respondent sought on several occasions to introduce further matters for the Tribunal to consider. The Tribunal informed the Respondent that it was minded not to admit these submissions.

11 Subsequently, a face-to-face Hearing was held on 14 and 15 June 2022 at the Centre City Tower, 5-7 Hill Street, Birmingham, West Midlands B5 4UU ('the Hearing') at which the Applicant was represented by Mr Strangward and Mr Raza appeared in person.

At the outset, the Tribunal informed the parties that, with the exception of a report that was intrinsically connected to previously adduced evidence, it would not admit the

evidence relating to the matters drawn to its attention by the Respondent subsequent to the issue of Directions No. 3. Thereafter, the parties presented their respective cases.

12 The Tribunal members met to determine the applications on 30 June 2022.

Inspection

13 The Tribunal inspected the apartment building, as it is described in the leases, and within which the subject properties are situate on 20 April 2022. This building, which is constructed of brick with a flat pitch roof (probably in the 1960s), comprises a four storey purpose built and self-contained block of 13 apartments (maisonettes and flats) in a mixed commercial/residential area. There are grounds to the front and rear together with a parking area.

14 The inspection was carried out in the presence of Mr Strangward acting as the Applicant's representative and Mr Raza. It was not prudent to carry out an inspection of the roof, although it was possible to view, without entering, the loft space from within apartments 99, 101, 103 and 104 access to which also provided evidence of water ingress, mainly, on ceilings in bedrooms. During the inspection, the Tribunal noted, in particular, clear deterioration in the condition of the cantilever concrete balconies most noticeably in those on the eastern aspect of the apartment building.

The Lease

15 The Applicant and the Respondent enjoy rights and are subject to obligations set out in leases relating to 93, 95, 103 and 104 Rupert Street respectively entered into by Hartley Property Trust Limited, the Applicant, and a named lessee for a term of 99 years from 29 September 1988. As indicated above (see, paragraph 1), the leases differ only in relation to the service charge proportion payable in respect of 93 Rupert Street.

16 The provisions of these leases which are pertinent to the application are as follows.

17 Clause 4 of the leases contains the lessee's covenants for the payment of the service charge, which follow, and with which the Respondent is obliged to comply.

> "4.(1) THE Lessee hereby covenants with the Lessors, and as a separate covenant with the Management Company, to contribute and pay the proportions mentioned in the Sixth Schedule hereto of the costs, expenses, outgoings and matters mentioned in Part 1 of the Fourth Schedule hereto
>
> 4.(ii) The contribution under paragraph (1) of this clause for each year shall be estimated by the Management Company as soon as practicable after the beginning of the year, and the Lessee shall pay the estimated contribution to the Management Company by four equal instalments; the first day of January, the first day of April, the first day of July and the first day of October in that year…
>
> 4.(iii) As soon as reasonably may be after the end of the year 1988 and every succeeding year when the actual amount of the said costs expenses outgoings and matters for the year have been ascertained the Lessee shall forthwith pay the balance due to the Management Company or be credited in the books of the Management Company with any amount overpaid"
>
> In each instance, the Sixth Schedule cites the service charge proportion payable and provides that it relates to 'the expenses incurred by the Management Company in the performance of its obligations under Clauses 5 and 6 of this Lease and the outgoings and other matters mentioned in the Fourth Schedule.'

18 Clause 5 of the leases set out the obligations of the management company in respect of the maintenance, repair, cleansing, redecoration and renewal of the Apartment Building' within which the subject properties are situate and with which it covenants to comply. Clause 5 provides:

"5. THE Management Company hereby covenants with the Lessee (subject to contribution and payment as hereinbefore provided), and as a separate covenant with the Lessors, as follows:-

(i) To maintain, repair, cleanse, re-decorate and renew

(a) the roofs, foundations and main structures of the Apartment Building, including the gutters and downspouts and the window and door frames and the exterior doors

(b) the boundary walls and fences of the Estate

(c) the gas pipes, water tanks and pipes, sewers, drains, and electric and other cables and wires, in under and upon the Estate other than any such serving only one apartment in the Estate

(d) the entrance halls, landings, staircases meter cupboards (other than any included in a lease of an apartment in the Estate), and the refuse shute and paladin store forming part of the Apartment Building

(ii) So far as practicable, to provide for the lighting of, and to keep clean, the entrance halls, landing, staircases, meter cupboards (other than any within such apartment), and the refuse shute and paladin store in the Apartment Building

(iii) So far as practicable, to keep the gardens, grounds, drives, footpaths and access ways on the Estate in good order and condition, and so far as the Management Company deem appropriate, cultivated and lighted

(iv) As often as is reasonably required (but not less frequently than once in every four years), to decorate the exterior of the Apartment Building, the entrance halls, landings, staircases and meter cupboards in the Apartment Building (other than any such within an apartment) heretofore or usually painted or decorated, such painting to be with at least two coats of good quality paint

Clause 8(d) of the leases states that the word "repair" includes 'the rectification or making good of any defect in the foundation roof or main structure of the building notwithstanding that it is inherent or due to the original design thereof.'

Clause 6 sets out, principally, the responsibilities of the management company for the insurance of the 'Apartment Building' with which it covenants to comply.

19 In turn and as intimated above, Part I of the Fourth Schedule provides that the lessee shall contribute to the costs and expenses incurred by the management company in carrying out its obligations under clauses 5 and 6 of the leases (see, Part I, paragraph 1). Part I of the Fourth Schedule also envisages that costs and expenses incurred by the management company may include provision for anticipated costs and expenses in a reserve fund to which, similarly, the lessee is obliged to contribute. In this respect, Part I, paragraph 10 of the Fourth Schedule provides as follows:

"10. Such sum or sums as shall be estimated by the Management Company to provide a reserve to meet all some or any of the costs expenses outgoings and matters mentioned in

this part of this Schedule which the Management Company anticipate will or may arise during the remainder of the term granted by this Lease (the sum or sums under this paragraph and the balance thereof for the time being hereinafter called 'the reserve fund'"

Part 2 of the Fourth Schedule, paragraph 12 specifies that the reserve fund shall be held by the management company in trust for the lessees.

Relevant Law

20 The relevant law comprises sections 18, 19 and 27A of the 1985 Act together with those Court and Tribunal decisions that relate to the interpretation and operation of those provisions.

21 Sections 18 and 19 of the 1985 Act provide:

18(1) In the following provisions of this Act 'service charge' means an annual amount payable by a tenant of a dwelling as part of or in addition to 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 include 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.

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 provision of services for carrying out the works, only if the services are of a reasonable standard;

and the amount 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 way of repayment, reduction, or subsequent charges or otherwise.

22 Section 27A of the 1985 Act, so far as material, provides:

(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) Sub-section (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 included for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable for the costs, 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.

23 The 'appropriate tribunal' is this Tribunal.

24 In the ordinary course of events, the payment and recovery of the service charge is governed by the terms of the lease which sets out the agreement that has been entered into by the parties to the lease. However, these important statutory provisions in the 1985 Act provide additional protection to tenants/leaseholders, broadly, through the application of a test of 'reasonableness'.

25 The construction of provisions in a lease and, hence, the meaning to be attributed to those provisions is a matter of law whilst the 'reasonableness' or otherwise of the service charge for the purposes of the 1985 Act is a matter of fact. There is no presumption either way in deciding the 'reasonableness' of a service charge.

If a leaseholder provides evidence which establishes a *prima facie* case for a challenge to a service charge, the onus is on the landlord to counter that evidence. Consequently, a decision is reached on the strength of the arguments made by the parties. Essentially, a Tribunal decides 'reasonableness' on the evidence which has been presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2 EGLR 100).

26 With regard to the test of establishing whether a cost was reasonably incurred, the usual starting point is the Lands Tribunal in *Forcelux Limited v Sweetman* [2001] 2 EGLR 173 ('Forcelux'), which concerned recovery of insurance premiums through a service charge, in which Mr PR Francis said:

"*[39]…The question I have to answer is not whether expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.*

[40] But to answer that question, there are in my judgment, to distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. The second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market."

27 Subsequently, in the Lands Tribunal decision in *Veena v Chong* [2003] 1 EGLR 175, Mr PH Clarke FRICS observed:

"[103]…The question is not solely whether costs are 'reasonable' but whether they are 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were reasonable."

28 Recently, the Court of Appeal analysed the concept of 'reasonably incurred' in section 19(1) of the 1985 Act in *The London Borough of Hounslow v Waaler* [2017] EWCA Civ 45 (*'Waaler'*) in the course of considering whether the cost of replacing windows by Hounslow was reasonable where those windows could have been repaired at a cost that was substantially less than the cost of replacing the windows. The court said that in applying the test of establishing whether a cost was reasonably incurred the landlord's decision making process is not the 'only touchstone'. A landlord must do more than act rationally in making decisions, otherwise section 19 would serve no useful purpose. It is particularly important that the outcome of the decision making process is considered. As HHJ Stuart Bridge said in the Upper Tribunal in *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC):

"*[47] If, in determining whether a cost has been 'reasonably incurred', a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in Waaler. I agree with the Court of Appeal that this cannot be the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in Forcelux, necessarily a two-stage test.*

[48] Context is, as always, everything, and every decision will be based on its own facts…"

29 Further, in approaching the question of 'reasonableness', the following cautionary words of HHJ Mole QC in *Regent Management Limited v Jones* [2010] UKUT 369 (LC) are important:

"*[35] The test is whether the service charge that was made was a reasonable one; not whether there are other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem…All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT [The Tribunal] may have its own view. If the choice had been left to the LVT, it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable."*

Submissions

The Applicant

30 In its Statement of Case, the Applicant indicated that the applications to the Tribunal were made because the Respondent had failed to pay the service charge contributions relating to the estimated quarterly service charge for the period 1 October 2021 to 31 December 2021 that were due in respect of the subject properties ('the interim service charge'). The Applicant adduced in evidence copies of the demands for payment dated 17 September 2021 that had been served on the Respondent and which showed that the sum of £500.00 was payable in respect of each of 95, 103 and 104 Rupert Street and £525.00 in the case of 93 Rupert Street (pp. 28-31 of its bundle). The specified contributions were due for payment on 1 October 2021.

31 With regard to the payability of the estimated service charge, which was the subject matter of these applications, the Applicant acknowledged its obligations under clauses 5 and 6 of the leases, but pointed out that its fulfilment of the obligations set out in clause 5 were made, explicitly, subject to the Respondent and other leaseholders complying with their covenants to contribute towards and pay the service charge in accordance with the terms of the leases. The leaseholders' covenants to contribute towards and pay the service charge were contained in clause 4 of the leases and provided for the appropriate contribution and payment by the Respondent and other leaseholders towards those 'costs, expenses, outgoings and matters' incurred by the Applicant that were mentioned in Part I of the Fourth Schedule to the leases. The Applicant intimated that Part I referred, expressly, to the 'costs and expenses' incurred by the Applicant in carrying out its obligations under clauses 5 and 6, but, significantly for the purposes of the applications, also encompassed 'all costs and expenses…of whatsoever kind' that it incurred in making provision for future or anticipated liabilities in a reserve fund.

32 The Applicant concluded that, in light of this examination of pertinent provisions in the leases, the sum set out in the estimated service charge for the relevant period was contractually due under the terms of the leases and payable in accordance with clause 4(ii) of the leases.

33 As to the second question that the Applicant was required to address, namely whether the sum demanded from the Respondent is greater than a reasonable estimate of the anticipated costs of the Applicant in relation to the service that it is contractually required to provide to the Respondent, the Applicant made the following points.

34 First, the Respondent has not challenged the payability and/or reasonableness of the estimated service charge in the First-tier Tribunal. Similarly, the Respondent did not challenge the estimated costs for either the year ending 30 September 2020 or those pertaining to the year ending 30 September 2021. In respect of these years, the Applicant stated in its Statement of Case:

"[21] All invoices for the year ending 30 September 2020 were provided to all Lessees, and none of the quarterly service charges for this year were challenged at the FTT.
[22] There was no increase for the year ending 30 September 2021, and none of the quarterly service charges for this year have been challenged."

35 Secondly, the Applicant conceded that there had been a substantial increase in the estimated service charge for the year ending 30 September 2022. Hence, whilst the estimated costs for the year ending 30 September 2021 were £18,400.00, the estimated costs for the year ending 30 September 2022 were £25,000.00. It opined that this increase is the contentious issue in this case.

36 The Applicant presented copies of the estimated costs for the years ending 30 September 2020 and 30 September 2021 in evidence (pp. 36-37 and 40-41 in its bundle of documents) together with copies of the estimated costs for the year ending 30 September 2022 in respect of 95, 103 and 104 Rupert Street, which follow, and those relating to 93 Street which differ only as to the percentage contribution towards the estimated service charge payable in respect of that property (pp. 42-43 in its bundle of documents).

Sycamore Management (Nechells) No. 1 Ltd

01/10/2021-30/9/22

Estimated Costs (Budget)

95, 103 and 104
Rupert Street Nechells, Birmingham B7 5DS

	Yearly Amount	**Your Proportion (8.00%)**

	SERVICES AND MAINTENANCE		
Cleaning and Rubbish Removal		**£2,500.00**	**£200.00**
Building Maintenance & Repairs		**£3,000.00**	**£240.00**
Mowing Lawns & Gardening		**£2,500.00**	**£200.00**
Painting and Decorating		**£1,000.00**	**£80.00**
	PROFESSIONAL SERVICES		
External Management		**£3,000.00**	**£240.00**
Accounts		**£600.00**	**£48.00**
Legal Expenses		**£1,000.00**	**£80.00**
	UTILITIES		
Electricity Supply to Communal Areas		**£150.00**	**£12.00**
	INSURANCE		
Buildings Insurance		**£2,500.00**	**£200.00**
Directors and Officers Indemnity		**£1,250.00**	**£100.00**
	RESERVE FUND	**£7,500.00**	**£600.00**
	TOTAL	**£25,000.00**	**£2,000.00**

37 The Applicant explained that the increase occurred for several reasons. In its opinion, the overriding reason was the decision that it took to replace the existing roof of the building with a new roof rather than, as in previous years, to focus on roof repairs for which provision (£1,000.00) was made in the estimated costs for each of those years.

The decision to replace the existing roof was prompted by the fact that a series of rainwater leaks, which had caused damage to apartments, had been reported by leaseholders leading to various works on the existing roof (including replacement of part of the roof above 99, 100 and 101 Rupert Street which succeeded in stopping the leaks into 99 and 101), by the informed opinion that the tiles on the existing roof are unsuitable for use on that roof and by the fact that the roof is bowing. The Applicant accepted that it would take several years to raise the funds necessary to pay for a new roof and that the replacement of the existing roof would probably be done in stages.

38 The Applicant informed the Tribunal that it had embarked on a section 20 consultation in December 2020 relating to the replacement of the existing roof the outcome of which was that a contract for the replacement/renewal of the roof was awarded to JMS Roofing & Building Limited ('JMS Roofing'). JMS Roofing quoted the costs of the required works as £53,430.00 (plus VAT). The Applicant adduced a copy of the JMS Roofing report and quotation dated 12 February 2021 in evidence (pp. 87-92 in its bundle of documents) and referred the Tribunal, in particular, to the following section of the report which is headed 'Overview':

"The building dates back approximately 50 years and is currently showing multiple areas of ingress throughout the roof space. The existing roof is covered with Marley concrete pan tiles.

The pantiles are mounted on a treated timber baton fixed to Stramit board. The Stramit board remains covered in the original felt covering.

The slow pitch of the roof was designed for a felt roof covering which, although has limited longevity it is suitable for this particular roof design. In more recent years (estimated 15-20 years) the roof has been overlaid with an incorrect roof lamination.

Marley pantiles, as with the large majority of tiles systems, is only suitable for roofs with a minimum roof pitch of 20° was recommended in BS 5534. The roof was measured accurately on site with a digital meter and is >8 Degrees. Due to the overlapping system of the tiles the tiles themselves sit a >4.5 Degrees (almost horizontal).

As a result of the above problem, water flow is impeded and readily tracks back over the head of the tiles. In wind blown conditions the problem is exasperated *[sic]*."

The Applicant added that the Respondent did not contest the section 20 consultation or its outcome.

39 In his witness statement, Mr Strangward stated that it became known that a number of leaseholders would be unable to pay their respective contributions towards the designated cost of a new roof. Consequently, the Applicant is looking for a cheaper alternative with the costs spread over several years. He added that '[T]his is why the Applicant has concluded that an amount of £7,500 is required each year.'

In the letter dated 17 September 2021 sent to the leaseholders by the Applicant that accompanied the interim service charge demands, the Applicant had informed leaseholders of the search for a cheaper alternative and had stated that the section 20 service charges for renewal of the roof could only be cancelled if a cheaper viable alternative could be found.

Subsequently at the Hearing, Mr Strangward informed the Tribunal that the figure of £7,500.00 may now prove to be insufficient.

40 The Applicant also informed the Tribunal that it had commissioned Michael Kilbey Associates, Cladding and Roofing Consultants, to undertake an independent inspection and report on the tiled roof coverings at 93-104 Rupert Street. The Applicant presented a copy of the ensuing report ('the Kilbey Report') that was written by Guy Kilbey F.I.o.R and dated 20 October 2021 in evidence (pp. 71-86 in its bundle of documents).

41 In his witness statement, Mr Strangward referred the Tribunal to the following paragraphs in the Kilbey Report that were, in his opinion, particularly indicative of the need to replace the existing roof:

"**4.9 -** "undersize battens", "weight of concrete tiles on a roof structure designed for a lighter weight roof"
5.1 - "condition of the roof is poor", "the tiles used are not fit for use on this roof"
5.3 - "the tiles have been laid on a pitch roof some 22 degrees below the minimum acceptable roof pitch"
5.7 - "concrete tiles being too heavy for the roof structure", "tile battens are undersize for the rafters"
6.3 - "the roof coverings are in my opinion not fit for purpose"
6.4 – "I am not of the opinion the roof can be successfully repaired", "the only way to address these fundamental issues and end up with a fully waterproof roof would be to replace the entire roof"

42 The Applicant also indicated that a copy of the report was sent to each of the leaseholders with a letter dated 26 October 2021. In that letter, which was also adduced in evidence (p. 63 of its bundle of documents), it was stated:

"This report is self-explanatory, and so it should now be accepted that the granular concrete Double Roman tiles on the roof are not fit for purpose, and that the roof cannot be repaired."

43 The Applicant added that the property owners' insurance policy for 93-104 Rupert Street had been renewed with Riviera Insurance in April 2022. An e-mail dated 12 April 2022 from Riviera Insurance, which was adduced in evidence (p. 181 of its bundle of documents), confirmed that renewal. However, the Applicant opined that it was imperative, in view of the second paragraph of that e-mail that follows, that arrangements are put in place, promptly, for the replacement of the roof.

"Please note, that although the policy has renewed this year, if the situation regarding the roof is not resolved within the next 12 months, not only would there be a possibility that your current insurers may not offer renewal terms next year, I will also be unable to obtain alternative quotations due to the premises not being in a good state of repair. Therefore, we would recommend that plans are put in place as soon as possible for the arrangement of the replacement of the roof."

44 The Applicant related that a second reason for the increase in the estimated service charge for the year ending 30 September 2022 was the raising of the provision in the estimated costs (budget) for 'building, maintenance and repairs' from £2,000,00 to £3,000.00. In this respect, Mr Strangward stated in his witness statement that it was known that 'two of the balconies at the side of the building by the car park are in a weakened condition', and that this was confirmed in a structural report dated 2 August 2021 ('the structural report') which was prepared for the Applicant by Structural Surveys Ltd. Further, a quotation obtained from Birmingham City Laboratories dated 12 August 2021 showed that the cost for necessary structural testing of the balconies would be £1,874.00 (plus VAT).

Mr Strangward added that, overall, it was estimated that the cost of the testing and repairs to the balconies would be around £3,000.00 and that, therefore, this would account for the aforementioned sum within the budget leaving no monies available for other necessary maintenance and repairs.

He also accepted that the amount allocated was now likely to be insufficient to fund the works that were required on the balconies and confirmed this at the Hearing.

The Applicant adduced a copy of the structural report and the quotation from Birmingham City Laboratories in evidence following the Tribunal's inspection.

45 The Applicant indicated that the final reason for the increase in the estimated service charge for the year ending 30 September 2022 was the inclusion in the budget of £3,000.00 to cover the cost of appointing a managing agent. In his written statement, Mr Strangward stated that the appointment of a managing agent had been mentioned many times in the past and that it was the Applicant's intention to enlist the services of the firm, Colmore Gaskell, for this role. Colmore Gaskell had prepared an estate management proposal relating to the provision of full management services dated 13 November 2021 for the Applicant in respect of 93-104 Rupert Street which specified a management fee of £2,275.00 (plus VAT) per annum. The Applicant included a copy of this proposal in the bundle of documents that accompanied its statement of case (pp. 93-100).

46 At the Hearing, Mr Strangward informed the Tribunal that he had 13 years of experience in estimating costs and managing the building for the Applicant. In this respect, he submitted that it is undisputed that the subject properties are situated in an old building which requires constant attention in terms of maintenance and repairs. Undoubtedly, it would be beneficial to undertake a full building survey and, perhaps, this should have been done before the Applicant undertook the section 20 consultation. In the meantime, however, whilst it is apparent that the costs attributable to annual and recurring costs for general works have not changed significantly, there is a pressing need to make provision for anticipated costs associated with matters such as replacing the existing roof of the building and repairs to the balconies. This was done in the estimated budget for the year ending 30

September 2022. He noted that the Respondent had not provided any like for like quotations for any of the estimated costs set out in the estimated budget for that year.

Mr Strangward also re-affirmed the decision taken by the Applicant to replace the existing roof with a new roof. In his opinion and in view of the contents of the reports presented by JMS Roofing and Kilbey Associates, there was no practical alternative to this course of action and, consequently, whilst acknowledging that the final report written by WLT, which was relied upon by the Respondent (see further below, paragraphs 55-56), was 'helpful in some respects' and appeared to contemplate as one of its suggestions an approach that was similar to that advocated by the Applicant, it was apparent that there was no consensus between the parties on the question of the replacement of the roof which the Respondent opposed.

Mr Strangward concluded that with the passage of time the Applicant believes that the estimated service charge is, as a whole, insufficient to cover costs that are likely to be incurred, and that, consequently, the Applicant reserves its right to issue balancing charges under clause 4(iii) of the leases.

The Respondent

47 The Respondent provided the Tribunal with what he regarded as evidence that was material as background to the applications made by the Applicant.

48 He stated that the leaseholders of 93-104 Rupert Street were hardworking people some of whom were members of ethnic minorities whose first language was not English. In resisting the applications, he regarded himself as their 'representative' even though none of them had chosen either to object to the applications through the Tribunal, possibly because of the previously mentioned factors pertaining to ethnicity and language, or to appoint him, formally, to speak for them. In the Respondent's opinion, those factors may also explain the lack of challenge by those leaseholders to service charges in earlier years. In addition, the Respondent believed that some leaseholders found it difficult to approach Mr Strangward who is a fellow resident and their neighbour.

49 The Respondent believed that those leaseholders, who have not paid the interim service charge demand for the period 1 October 2021 to 31 December 2021, have funds available to pay, but they want to be sure that their monies will be used for purposes that can be justified and that those purposes are sanctioned by a properly elected Board of Directors. He added that monies had been provided by leaseholders to the Applicant by way of contribution towards the cost of renewal of the insurance cover for the building and for work on the deteriorating balconies.

50 The Respondent indicated that the payment, or otherwise, of this interim service charge demand was not the only point of difference between the Applicant and leaseholders. Others were evidenced in the copies of Minutes of Meetings involving the Applicant and leaseholders and various e-mail exchanges between the Respondent and Mr Strangward that were included in the Respondent's bundle of documents. Principally, these differences related to matters of management, the standard of work carried out on or in the environs of the building and actual costs incurred, especially on the roof, the composition of the Board of Directors of the Applicant and disputes between shareholders and directors, alleged conflicts of interest and the standing of previous County Court proceedings.

51 In these circumstances, the Respondent suggested that confidence and trust in the way the Applicant was managed had diminished amongst leaseholders. This was not helped by what he regarded as problems of communication with Mr Strangward.

52 The Respondent addressed aspects of the estimated service charge in various submissions, but he did this, collectively, in his supplemental statement dated 25 March 2022 in which, *inter alia*, the following observations were made.

Services and maintenance - £9,000.00

General

The Respondent stated that the service and maintenance work carried out yearly has not been challenged or questioned for various reasons which include the perceived difficulty of approaching Mr Strangward who is both a director of the Applicant and a fellow resident and neighbour. Amongst leaseholders, there has also been a lack of awareness of the maintenance works that have been carried out. The Respondent indicated that the estimates for the year ending 30 September 2022 are dependent on the production of valid receipts for the work done, and, in his opinion, such receipts should be made available much earlier than is presently the case with actual costs that have been incurred.

Mowing lawns and gardening - £2,500.00

The Respondent doubted that these services had been carried as regularly as expected and, on occasions, to a reasonable standard. There is no evidence to support the estimated cost of £2,500.00 in the budget for mowing lawns and gardening.

The Respondent had contacted Redbrick Maintenance which indicated in a quotation letter dated 25 January 2021 that it could provide the following services – gardening, cleaning and rubbish removal in common areas, window cleaning, painting in common areas, general maintenance/works, quarterly inspections, arrange Council waste collections for bulky or damaged waste and arrange extensive works and repairs – if engaged under a contract for a minimum of 12 months at either a daily rate of £60.00 per day or once a month at £720.00 per annum/twice a month at £1,440.00 per annum. The Respondent suggested that this would be more cost effective than the present work in these areas that had been undertaken, largely, by Mr Strangward's private maintenance business, Sycamore Property Services. The Respondent included the quotation letter in his bundle of documents (pp. 94-95).

Professional Services - £4,600.00

External management - £3,000.00

The Respondent indicated that the majority of leaseholders/shareholders are happy with the idea that the management of the building should be given to an independent managing agent. However, the Respondent does not favour the appointment of Colmore Gaskell as proposed by the Applicant, and he preferred the services offered by Cottons the projected costings of which (£2,960.00) he had sought in a document addressed to leaseholders/shareholders dated 26 January 2021 (pp. 81-93 of the Respondent's bundle) to compare with actual costs incurred by the Applicant in providing what the Respondent regarded as equivalent services. The Respondent intimated that an application for the appointment of a manager may be made to the Tribunal.

Insurance - £3,750.00

The Respondent noted that there was a substantial increase (£1,000.00) in the estimated cost for Directors' and Officers' Indemnity Insurance compared to the previous year. He attributed this to the Applicant's inability to secure a renewal of an existing policy.

Reserve Fund - £7,500.00

Replacement of the roof

The Respondent stated that the roof is usually covered by insurance provided it is maintained on a regular basis, whatever its age or the type of roof tiles used. He queried repair work that had been undertaken by the Applicant on the roof 'last year'. It was important to establish whether these were emergency roof repairs, which 'roofers' carried out the work and the actual cost. The actual cost was material to service charge payments and the estimated service charge for the year ending 30 September 2022.

As to the question of whether the existing roof should be replaced or repaired, the Respondent cast doubt on the observations in the Kilbey Report that the whole roof is in a poor condition and should be replaced when Mr Kilbey, the author of the report, did not go onto the roof because it was unsafe to do so and, as far as the Respondent was aware, only inspected two loft spaces. In the Respondent's opinion, there is a possibility that the roof could be repaired and not replaced and this would have an impact on the reserve fund and the service charge.

In light of this, the Respondent informed the Tribunal that he had asked an experienced roofer, Mr Derick Josebury of One Call Roofing, to visit 99, 102, 103 and 104 Rupert Street with a view to assessing the condition of the roof and that this had led to a series of letters (pp. 100-105 in the Respondent's bundle) written to the Respondent by Mr Josebury in February and March 2022 in which Mr Josebury commented on various features of the roof, outlined matters of concern and recommended that a further survey of the roof be undertaken by a qualified structural engineer or surveyor.

53 In the course of the Inspection, the Respondent sought to introduce in evidence an initial report dated 19 April 2022 on the general state of repair and condition of the roof and other areas at 93-104 Rupert Street, which he had commissioned, written by Mr Graham E Thompson FRICS DipProjMan of Wiggins Lockett Thompson Limited ('WLT') as an expert witness following a site inspection. The Tribunal admitted the report in evidence after Mr Strangward indicated that he did not object to the admission of the report. The Respondent made available the final report ('the WLT Report') dated April 2022 and comprising 18 pages of text and numerous photographs to the Tribunal in late May 2022.

54 At the Hearing, the Respondent revisited many of the matters that he had raised in his written submissions and supporting correspondence and documents including, in particular, what he perceived to be poor quality of workmanship in services provided by the Applicant, especially the repairs to the roof, the need, in his opinion, for earlier disclosure of invoices and related documents relating to actual costs incurred, and the imperative for the appointment of a managing agent.

As to the question of the reasonableness of the estimated service charge, Mr Strangward asked the Respondent whether he accepted that the estimated costs, other than the provision in the reserve fund for the replacement of the roof which was clearly contentious, were reasonable. The Respondent replied that he had expressed his discontent with some of them and offered alternatives, but he did not challenge them. He confirmed this when requested to do so by the Tribunal.

55 With regard to the provision in reserve fund for the replacement of the existing roof, the Respondent maintained his position that there was no immediate need to replace the existing roof and, thereby, incur extensive repairs and considerable expenditure. There was scope for it to be repaired. In support of this proposition, the Respondent called in aid the WLT Report (pp. 180-244 of his bundle) which he intimated not only identified and examined the shortcomings of the existing roof, including workmanship concerns in

relation to recent roof repairs, but also pointed out, notwithstanding that the roof tiles do not meet normal design requirements as far as roof pitch is concerned, certain positives including the absence of structural failure in the timber roof structure and the performance of the roof tiles to an acceptable standard so far as water penetration and roof leaks are concerned leading to the conclusion that the existing roof is not failing and, also, that there was no need to replace the roof above 99, 100 and 101.

The Respondent also referred to the three options set out in the WLT Report that in the view of the author of the report might be considered in relation to the future repair and maintenance of the roof, namely to retain the existing roof tiles (Option 1), re-roofing with a new roof covering (Option 2) and to reinstate the roof to its original specification (Option 3) (pp. 192-195 of the Respondent's bundle).

56 The Respondent stated that, in his opinion, either Option 1 or Option 3 would be preferable both of which involved an element of repair to the existing roof rather than its replacement and each of which provided a necessary degree of repair to the roof in the short term. The principal differences between these options being that Option 1 would involve retention of the existing roof, including the recently repaired roof, estimated in the WLT Report to have a 5-10 year lifespan subject to the carrying out of certain specified works, whilst Option 3 envisages the removal of the replacement roof above 99, 100 and 101 and, thereafter, the reinstatement of felt and roof tiles to match the original roof.

Determination

Introduction

57 In making its determination, the Tribunal considered, carefully, the oral and written evidence submitted by the parties, including the pertinent provisions of the leases pertaining to 93, 95, 103 and 104, the relevant law and, where appropriate, acted in accordance with its knowledge and experience as an expert Tribunal.

The written evidence submitted by the parties is voluminous. On the Respondent's part, such volume could have been significantly lessened if he had been far more discerning and focused only on the presentation of evidence, whatever its nature, that was relevant to the resolution of the applications by the Tribunal - an apparently indiscriminate approach that was compounded by attempts to secure the admission of evidence otherwise than through the avenues prescribed by the Tribunal. Each of these practices prompted the Procedural Judge to remind the Respondent of the need to disregard other matters of dispute between the parties and to select and submit only evidence that related to the issue(s) arising out of the applications and to submit that evidence in the manner prescribed in Directives issued by the Tribunal (see above, paragraphs 7-8). The Respondent's failure to heed the latter imperative of the procedural judge led to the Tribunal's refusal to admit 'new' evidence which the Respondent sought to introduce in advance of the Hearing (see above, paragraphs 10-11). Neither of these practices is helpful to the Tribunal nor necessarily fair to the Applicant. They certainly do not enhance the Respondent's case.

58 In light of the above and to reiterate, the only issues that the Tribunal has jurisdiction to entertain and that arise out of the applications are those set out by the procedural judge in Directions No. 2, namely, first, whether the sum in the estimated service charge is contractually due under the terms of the lease, and, secondly, whether the sum so demanded is greater than a reasonable estimate of the anticipated costs of the Applicant in relation to the services that it is contractually obliged to provide to leaseholders for the period in question. In other words, these issues pertain to the 'payability' of the estimated service charge and its 'reasonableness' respectively. It will be recalled that the former entails construction or interpretation of relevant provisions of the leases, which is a matter

of law, and the latter the determination of the reasonableness, or otherwise, of the estimated service charge for the purposes of the 1985 Act, which is a matter of fact (see above, paragraphs 24-25).

Discussion

'Payability'

59 Mr Strangward provided a succinct and accurate summation of the Applicant's obligations under the leases and of the commensurate provisions requiring the Respondent to contribute in defined proportions through the service charge to the costs and expenses incurred or to be incurred by the Applicant in fulfilling those obligations. This summation also included reference to the setting up of the reserve fund by the Applicant in accordance with the terms of the leases, and to the legitimacy, in his view, of the provision in that reserve fund (£7,500.00 for the year ending 30 September 2022), as reflected, in part, in the estimated service charge, for estimated costs relating to the replacement of the existing roof. A reserve fund may serve either or both of the following purposes. First, it may be established with a view to meeting recurring expenditure, often over many years, when it acts as a security for manager of the building(s) that funds are available to meet that expenditure in circumstances where payments may be spread for the benefit of leaseholders. Secondly, a reserve fund may facilitate contributions by all leaseholders towards the long term cost of maintaining the building(s) and this may include, in particular, the accumulation of monies in that fund to cover irregular and expensive works which may be required at an undefined future date. It is the latter employment of a reserve fund that matches the purported user by the Applicant of the reserve fund in this case, namely to make provision for estimated costs relating to the replacement of the existing roof and this is given further consideration in due course (see below, paragraph 69).

By comparison and as portrayed in the evidence he presented to the Tribunal, the Respondent, whilst acknowledging his responsibilities in relation to the payment of the service charge, did not engage, other than relatively cursorily, with matters relating to the specific service charge provisions in the leases. However, he regarded the provision in the reserve fund for the replacement of the roof in the estimated service charge as unjustified and unacceptable.

'Reasonableness'

60 The second issue for the Tribunal to determine is whether the sum demanded is greater than a reasonable estimate of the anticipated costs of the Applicant in relation to the services that it is contractually required to provide to the leaseholders for the period in question, is critical to the outcome of the applications.

61 In this respect, the Applicant's case may be simply put. The reasonableness of the estimated service charge can be measured against the unchallenged estimated service charge costs for the preceding two years and where there is a departure in the estimated service charge with the inclusion of estimated costs for work on the balconies, the proposed engagement of a managing agent and provision for replacement of the roof leading to an increase in the estimated service charge the reasonableness of each of those estimated costs is discernible from the Applicant's submissions, notably in the latter instance the Kilbey Report.

62 The position of the Respondent is not so straightforward.

63 Hence, the Respondent's evidence as to the reasonableness, or otherwise, of the estimated service charge is best approached by differentiating between, on the one hand, the Respondent's submissions relating to designated estimated costs for services and

maintenance (£9,000.00), professional services (£4,600.00), utilities (£150.00) and insurance (£3,750.00) and, on the other, those concerned with the general provision in the reserve fund for replacement of the roof (£7,500.00).

64 In the former respect, it should be said at the outset that there is a dichotomy between the Respondent's written and, subsequent, oral evidence at the Hearing.

The Respondent's written evidence is selective and where attention is directed towards a particular element of the estimated service charge the treatment given, apart from dwelling on the quality and standard of works carried out previously by the Applicant, for example, gardening, tends to be illustrative rather than definitive. This latter point is readily apparent in the reference by the Applicant to what he regarded as comparative 'costings' for services and maintenance and external management which he had obtained from Redbrick Maintenance and Cottons respectively. In neither instance, did the Respondent secure like for like quotations for the estimated costs for these services as set out in the estimated budget and, as has been seen (see above, paragraph 52), he sought to relate the information gleaned from Cottons to actual costs incurred by the Applicant in providing various services. Moreover, the Tribunal doubts the commercial viability and, hence, utility of the 'costings' provided by Redbrick Maintenance when the rates it cites are juxtaposed with the services proffered.

In these circumstances, the Tribunal attaches little weight to this evidence which is neither persuasive nor compelling. However, be that as it may, such finding is rendered otiose by the Respondent's subsequent statement at the Hearing that he did not wish to challenge the reasonableness of the aforementioned designated estimated costs. Estimated costs that, incidentally, include provision for work on the balconies (£3,000.00 allocated by Applicant for this work in the budget for 'Building, Maintenance and Repairs' which falls under the generic heading 'Services and Maintenance') and the appointment of a managing agent (£3,000.00 nominated for 'External Management' within the provision for 'Professional Services').

65 By comparison, the Respondent's position with regard to the provision in the reserve fund for replacement of the existing roof is self-evident. He does not support replacement of the roof and, consequently, resists provision for its funding in the estimated budget. In the Respondent's opinion, the replacement of the existing roof is unnecessary and is not acceptable. The Respondent submits that it is not the only course of action open to the Applicant as is shown by two alternatives put forward in the WLT Report, namely retention of the existing roof tiles or reinstatement of the roof to its original specification, both of which involve to some degree the retention of the existing roof.

Decision

66 Against this backdrop, the Tribunal makes the following observations and findings.

67 With regard to the afore-mentioned designated estimated costs within the estimated service charge, the Tribunal finds that provision for such costs is reasonable and that they are reasonable in amount being, broadly, in keeping with the unchallenged practice followed by the Applicant for such costs in previous years, not countered by the Respondent's written or oral evidence and consistent with, in the Tribunal's knowledge experience as an expert tribunal, the range of costs that might reasonably be charged for such services. As to the novel provision for 'external management', the Tribunal gleans from the evidence that the parties agree, in principle, on the need to appoint a managing agent, and adds, simply, for the sake of completeness that, in its experience, £3,000.00 is a reasonable estimate of the fee that may be payable to such an appointee.

In other words and for the avoidance of doubt, the Tribunal finds that the following estimated costs within the estimated service charge for the year ending 30 September 2022 in respect of 93, 95, 103 and 104 are reasonably incurred and reasonable in amount:

SERVICES AND MAINTENANCE	
Cleaning and Rubbish Removal	**£2,500.00**
Building Maintenance and Repairs	**£3,000.00**
Mowing Lawns and Gardening	**£2,500.00**
Painting and Decorating	**£1,000.00**
PROFESSIONAL SERVICES	
External Management	**£3,000.00**
Accounts	**£600.00**
Legal Expenses	**£1,000.00**
UTILITIES	
Electricity Supply to Communal Areas	**£150.00**
INSURANCE	
Buildings Insurance	**£2,500.00**
Directors and Officers Indemnity	**£1,250.00**

With regard to the Applicant's proposed allocation of the estimated funds for 'Building, Maintenance and Repairs' to works on the balconies that are deemed necessary by the Applicant, the Tribunal observes that it is likely that further funding will be required once the repairs required are fully costed.

68 It follows from this finding that the sums demanded in the interim service charge in respect of these services are levied in relation to services that are reasonably provided and reasonable in amount.

69 As to the composition of the reserve fund, the only matters for the Tribunal to resolve are whether the provision by the Applicant for the replacement of the roof and the corresponding estimate are reasonable. It cannot adjudicate upon what might or might not be the optimal way to approach the problems with the roof and, in any event, would be ill-placed to do so as it did not inspect the roof and its inspections of the loft spaces were inconclusive.

The remit of the Tribunal is to decide whether the estimated service charge in relation to the projected replacement of the roof is a reasonable one and in making that decision it is irrelevant that there are other possible ways of charging that might be thought to be better or more reasonable. To re-iterate the words of HHJ Mole QC in *Regent Management Limited v Jones* [2010] UKUT 369 (LC):

"There may be several different ways of dealing with a particular problem…All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT *[the Tribunal]* may have its own view. If the choice had been left to the LVT *[the Tribunal]*, it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable."

In this case, it is clear that, presently, the parties disagree, fundamentally, about the proper course of action to be taken in rectifying the deficiencies of the existing roof. The Tribunal uses the word 'presently', because it cannot be assumed that this was always so bearing in mind that the Respondent did not challenge the section 20 consultation that was predicated on the replacement of the existing roof and led to the award by the Applicant of the contract to carry out that task to JMS Roofing. Naturally, the Respondent is troubled by the expenditure required to replace the existing roof an indication of which was given,

initially, by the contract awarded by the Applicant to JMS Roofing. Presumably, this explains, in part, the Respondent's willingness to entertain works in the nature of repair rather than replacement as personified in his expressed preference for the adoption of either Option 1 or Option 3 in the WLT Report; a preference that carries the implicit assumption that carrying out works of repair would be less expensive (although the WLT Report does not substantiate this as it contains no costings for works associated with any of the options that it puts forward). But, this stance serves only to distract from and has no direct bearing on the focus of the Tribunal's inquiry into whether the Applicant's decision to make provision in reserve fund for estimated costs attributable to replacing the existing roof is reasonable.

In this regard, it is evident that this decision is grounded in the section 20 consultation which was undertaken, in large part, on the strength of Mr Strangward's experience of managing the building and his familiarity with the condition of the existing roof informed, especially, by overseeing in a managerial capacity, recently, the replacement of part of the roof above 99, 100 and 101. Mr Strangward admitted, however, that, with hindsight, it would, perhaps, have been more prudent to have commissioned a structural survey prior to embarking on the section 20 consultation. Nevertheless, any void occasioned by the absence of such a survey was filled by the inspection of the existing roof conducted, subsequently, by Guy Kilbey of Michael Kilbey Associates and by the resultant Kilbey Report. The Kilbey Report states, *inter alia*, that the existing roof cannot be successfully repaired and that the only way to achieve a fully waterproof roof is to replace the entire roof. Critically, the WLT Report, although not as damning about the condition of the existing roof, also offers the replacement of that roof with a new roof covering as an option (Option 2) that might be contemplated in dealing with the deficiencies of the existing roof. In these circumstances and taking into account the expert evidence submitted by the parties, the Tribunal finds that provision in the reserve fund by the Applicant for the replacement of the existing roof is reasonable.

Following the above finding, the remaining question for determination is whether the estimate of £7,500.00 in the estimated service charge may be regarded as reasonable. Here, the concern is to ascertain how the Applicant arrived at this figure. It is apparent from the evidence that it is not based on the 'costing' that emanated from the section 20 consultation which, whilst still extant, has not been acted upon by the Applicant because of its search for a cheaper alternative. It is conceivable that the estimate is representative of what is perceived by the Applicant as such an alternative. However the difficulty for the Tribunal, regardless of whether or not this is the case, is that the Applicant has not defined with sufficient clarity what this estimate is intended to cover other than that it is generically attributable to the replacement of the existing roof and nor has it indicated how it was compiled. In this circumstance, the Tribunal is not in a position to find that this is a reasonable estimate and so determines.

Judge David R Salter
Chairman

Appeal Provisions

70 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

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

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