



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00BG/LSC/2022/0274**

**Property** : **Flat 137 Tequila Wharf & Car Park 54,  
681 Commercial Road, London E14 7LH**

**Applicant** : **Mr Kenneth Yau**

**Representative** : **In person**

**Respondent** : **Tequila Wharf RTM Company Limited**

**Representative** : **JFM Estate & Block Management LLP**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A of  
the Landlord and Tenant Act 1985 and  
administration charges under Schedule  
11 to the Commonhold and Leasehold  
Reform Act 2002**

**Tribunal members** : **Judge Pittaway  
Mr K Ridgeway MRICS  
Mr O Miller**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **28 March 2023**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The Tribunal makes the determinations as to liability to pay and reasonableness of service charge set out below.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal does not order the reimbursement of the Applicant's fee.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the **1985 Act**") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the **2002 Act**") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 1 April 2018 to 31 March 2023.

### **The hearing**

2. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Butler of counsel.
3. The Tribunal had before it at the start of the hearing a bundle of 363 pages and a skeleton argument from the Applicant dated 6 March 2023. The Tribunal heard evidence from Mr Yau. Mr Morley of Winchester Hawkins Limited gave evidence on behalf of the Applicant. Mr Casey of JFM Block & Estate Management LLP ('**JFM**') gave evidence on behalf of the Respondent. The bundle included a witness statement of Mr Sproston, a former director of JFM.
4. The Tribunal heard submissions from Mr Butler and Mr Yau.
5. Following the hearing, at the request of the Tribunal Mr Butler provided the Tribunal with the decision in *Waler v Hounslow LBC* [2010] UKUT 342 (LC) to which he referred in his submissions and also copies of the various cases referred to by Mr Yau in his skeleton argument. To the extent relevant these are referred to below.

### **The background**

6. The property which is the subject of this application is described in the Application as a 2 bedroom flat in a purpose built block of flats and 1 underground car park space.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary.
8. The Applicant is the tenant of the flat under a lease (which is undated in the bundle before the Tribunal) granted for a term of 125 years from 1 January 2006. The Applicant is the tenant of the car parking space under a lease (again undated in the bundle) for a similar term. Both contemplate the provision by the landlord of services (including the insurance of the block of which the flat forms part) for which the tenant pays service charge. The relevant provisions are referred to below.
9. The Respondent is a Right to Manage company appointed in 2018 to manage the Estate of which the flat forms part. JFM are its appointed managing agents.

### **The issues**

10. The Tribunal Directions of 29 September 2022 identified the following issues to be determined in respect of the service charge years from 1 April 2018 to 31 March 2023
  - Insurance Premiums for the period 1.4.2019 to 31.3.2023
  - Accounts production fee
  - Companies House late filing fees in April 2022
  - Management fees of JFM Estate & Block Management LLP (for the period 1.4.19 to 31.3.23)
  - Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made
  - Whether an order for reimbursement of application/ hearing fees should be made
11. Mr Yau challenged the independence of Mr Butler who confirmed that he was independent of the Respondent, that he did not know the directors of that company and that he appeared solely in the capacity as legal representative for the Respondent.

### **The Tribunal's decisions and reasons**

12. The tribunal has made determinations on the various issues as follows. In doing so the tribunal has had regard to the witness statements in the bundle, the evidence that it heard, the submissions made at the hearing and the various cases to which it was referred in reaching its decision. As appropriate, and where relevant to the tribunal's decision, these are referred to in the reasons for the tribunal's decision.

## Generally

13. Mr Butler referred the Tribunal to s19 of the 1985 Act and the decision in *Waler v Hounslow LBC* (“**Waler**”).

14. Section 19 of the 1985 Act provides,

*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 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.*

15. The decision in *Waler* states that whether costs are ‘reasonable incurred’ was to be determined by reference to an objective standard and that where the landlord has chosen a course of action which led to a reasonable outcome the cost of pursuing that course of action would have been reasonable incurred even if there were a cheaper outcome

## Insurance premiums

16. The Applicant did not challenge his liability to pay for the cost of insuring the block of which his flat forms part.

17. **Clause 3(1)(a) of the lease of the flat provides for the tenant to pay the landlord 1.12% of expenditure incurred by the landlord in carrying out its obligations under clause 4 (except for clause 4(4)) . Clause 4(1)(h) provides**

*‘The Lessor will at all times during the said term insure and keep insured the Block in the full reinstatement value in an insurance office or with underwriters of repute against loss or damage by fire and wherever possible on normal terms against flood subsidence and heave and such other comprehensive risks are usually found in a comprehensive policy for a property of this nature and architect's and surveyor's fees in connection with the rebuilding of the Block or any part of it and against any actions proceedings claims or demands which may be brought against or made upon the Lessor or by any owners or occupiers of any part of the Block or by any other person or persons by reason of any act or neglect or alleged act or neglect of the Lessor or of its agents builders contractors workmen or other persons employed by it in or about or in relation to or by reason of the state of repair or otherwise of the Block or any part of it.....’*

18. The Applicant submitted that the tenants should not be liable for the insurance commissions and fees included in the insurance premiums. He referred the tribunal to the First-tier Property Tribunal decision in *Various leaseholders v Canary Riverside Estate Management Limited and anor ('Canary Riverside')* LON/00BG/LSC/2019/0277 and paragraphs 12.5-12.6 RICS Code of Practice 3<sup>rd</sup> Edition, as requiring the Respondent to disclose all commission and/or fees and other remunerations received.
19. ***The Tribunal had directed that the Respondent provide details of any commission received by the landlord, its broker or agents. The Tribunal note that the reference in the directions to the landlord should more properly have been to the Respondent. No information was provided by the Respondent so that there was no evidence from the Respondent whether or not the RTM company or JFM had received any of the commission forming part of the total premium.***
20. ***From the evidence the Tribunal heard it is clear that until the service charge year to March 2023 the insurance premium included commission. The tribunal note that in the year to March 2023 the Respondent has negotiated a fee with the broker for placing the insurance rather than the premium including commission.***
21. ***The Tribunal heard evidence from Mr Morley that commission is one of the means by which a broker is remunerated and that it is usual practice for such commission to be retained by the broker through whom the insurance had been placed. The Applicant did not provide any evidence to suggest that it was possible to obtain insurance without the payment of the commission or that any part of the commission had been paid to the Respondent or JFM.***
22. ***On the evidence before the Tribunal it finds that neither the Respondent nor JFM received any such commission.***
23. ***The decision in Canary Riverside (a decision which is not binding on this Tribunal) contemplates that disclosure of commission paid may be directed, as the Tribunal's directions did in this application, but there is no evidence before this Tribunal that the Respondent received any commission. The Tribunal notes that in Canary Riverside it was held that the commission costs were reasonably incurred as there was no suggestion by the Applicants that the work undertaken by the brokers in that case was unnecessary (paragraph 77). This is consistent with Mr Morley's evidence***

***that the commission remunerates the broker for the work it undertakes.***

24. ***The paragraphs from the Code of Practice to which the Applicant referred the tribunal relate to commission received by the managing agent. There is no evidence before the tribunal that any commission was paid to JFM.***
25. The Applicant did not challenge the premium of £36,710 charged for the service charge year ending 31 March 2020 but submitted that he had been double-charged for the period from 20 March 2019 to 1 September 2019. In his reply to the Respondent's comments in the Scott Schedule Mr Yau submitted that building insurance for the period 1 September 2018 to 1 September 2019 had been effected through Zurich at a premium of £43,464 and that the Respondent had then effected another insurance through MS Amlin for the period from 20 March 2019 to 19 March 2020 at the premium of £36,710. In his reply Mr Yau submitted that there was double insurance for the period from 27 January 2019 to 31 August 2019.
26. In its reply in the amended Scott Schedule the Respondent stated that the leaseholders had only been charged £5,520.78 being the proportion of the premium for the insurance effected through Towergate for the period from 27 January 2019 to 21 March 2019 and supported this with an appropriate credit note in the bundle showing a credit for the period after 21 March 2019.
27. ***The tribunal find that there is no evidence before it of double-charging for either of the periods referred to by Mr Yau, being 20 March 2019 to 1 September 2019 and subsequently 27 January 2019 to 31 August 2019.***
28. ***The tribunal finds that the property was insured through brokers Towergate until 21 March 2019 and through Winchester Hawkins from 22 March 2019. The accounts in the bundle for the year to 31 March 2020 show the insurance premium for the Estate for the year to 31 March 2020 to be £34,860 and for the car park to be £1,850, totalling £36,710, which is the premium for the insurance effected through Winchester Hawkins. On the evidence before the Tribunal there is no evidence of the Applicant having being charged any element of the insurance previously arranged through Towergate in the service charge year to March 2020 and this would be consistent with the credit note in the bundle, as the insurance was cancelled before 1 April 2019.***
29. The Applicant submitted that the reinstatement value of the Estate had been overstated.

30. ***The Applicant produced no evidence to substantiate his submission that the value of the Estate had been overstated. The declared value of the estate in the policy for the year 1 September 2018 to 1 September 2019 (which year was not challenged) was £52,800,00 and the sum insured £79,200,000. The Applicant did not challenge the sum insured for this year. The insurance proposed by Winchester Hawkins gave a declared value of £54,673,875 and a total sum insured of £65,608,650. The cover ultimately placed through Arthur Gallagher insured the buildings for £46,000,000, less than the declared value of the estate to 1 September 2019 and less than the declared value adopted by Winchester Hawkins. The Tribunal therefore find that the value of the estate had not been overstated.***
31. The Applicant challenged the reasonableness of the following insurance premiums
- £483,021 in the service charge year to 31 March 2021
  - £548,224.80 in the service charge year to 31 March 2022
  - £137,450.81 in the service charge year to 31 March 2023
32. The Applicant submitted that it was not reasonable for the insurance premium to increase so significantly in March 2020 from the premiums previously charged. The Applicant referred the Tribunal to the insurance premium secured by Winchester Hawkins of £318,429.87 against the premium actually charged for the insurance arranged through brokers Arthur J Gallagher of £483,021.08. He submitted that on the basis of the quote from Winchester Hawkins a reasonable premium for the year to 31 March 2021 would have been £318,429.87.
33. The Tribunal heard evidence from Mr Morley of Winchester Hawkins that there was a hardening of the insurance market towards the end of 2019 and that his firm had advised the directors of the Respondent of this in January 2020 of this. His witness statement set out the steps that his firm took to place the insurance between then and March 2020. He gave evidence that on 25 March 2020 he was advised by Mr Sproston, then a director of the Respondent, that JFM were seeking an exclusive agreement with Arthur J Gallagher ('AJG'). On 27 March 2020 Mr Morley sent Mr Sproston his contract certain terms for insurance for a 12 month period at a declared value of £54,673,875 at a premium of £318,429.87. On 30 March Mr Sproston advised Mr Morley that the Directors of the Respondent, having received his quotation, had no alternative but to provide exclusive authority to AFG to obtain a comparative quote. This had the effect of removing Winchester Hawkins as the Respondent's broker. On the same date Mr Sproston indicated that the Directors of the Respondent were now happy to proceed with Winchester Hawkins but no letter rescinding the authority provided to AFG was provided, so that on that date Mr Morley had no alternative but

to advise Mr Sproston that his firm's terms were withdrawn and null and void at close of business that evening.

34. The tribunal heard evidence from Mr Casey, a director of JFM. He gave evidence that when by 19 March 2020 the Respondent had received no quote from Winchester Hawkins it looked for a second quotation. JFM referred the Respondent to AFG. At 5pm on 30 March Mr Sproston emailed JFM to say that the Respondent would accept the Winchester Hawkins' quote, by which time it had been withdrawn. Mr Casey stated that JFM had approached brokers other than AGH but they were unresponsive. The insurance placed through AFG was initially with Zurich, who only covered £10,000,000 of the sum insured. It was not until July 2020 that the estate was insured for the full amount of £46,000,000, through the use of Excess Layer Insurers. Mr Casey accepted that from March to July 2020 the estate had been underinsured.
35. In cross examination Mr Casey stated that JFM had approached AFG as it was the largest insurance broker in the market. Because of the shortness of time between 19 March and when the then current insurance was due to expire the Respondent had no alternative but to sign the letter that AFG required, giving it exclusive authority. JFM had been given authority by the board of the Respondent to issue the required letter.
36. Mr Casey stated that the fact that the estate had been underinsured between March and July was not disclosed to the tenants on instruction from the directors of the Respondent.
37. ***The tribunal sympathise with Mr Yau's complaint that the insurance actually placed was at a larger premium than that proposed by Winchester Hawkins. However on the evidence before the tribunal it finds that a premium of £483,021.08 was reasonable given the circumstances in which the Respondent found itself on 31 March 2020. The quote from Winchester Hawkins was significantly lower but was no longer available because the Respondent had provided AFG with exclusive authority. It would appear that the Respondent had not appreciated the effect of such a letter which meant that it was not possible to reactivate the Winchester Hawkins quote on 30 March. Mr Casey gave evidence that the Respondent had subsequently sought to obtain other quotes but without success. Mr Yau has not provided the tribunal with any evidence that after 30 March 2020 it would have been possible to place the insurance for a premium less than that charged by AFG.***



- 38. *The Tribunal note with concern that the directors of the Respondent felt that it was appropriate to withhold from the leaseholders the fact that the estate was underinsured.***
- 39.** Mr Yau submitted that a reasonable premium for the year ended 31 March 2022 would have been £359,825.75, rather than the premium of £548,224.80 brokered by Locktons. He calculated this by increasing the premium proposed in the previous year by Winchester Hawkins and increasing this by 13%. The 13% had been calculated by calculating that the percentage increase in the actual premium charged (£548,224.80) was 13% more than the premium charged for the preceding year (£485,179.16). Mr Yau referred to £359,825.75 as the ‘notional premium achievable by Winchester Hawkins’.
- 40.** Mr Casey stated that the premium of £548,224.80 was a reflection of the market. He referred to the fact that in the following year the Respondent was able to place the insurance for a premium of £137,450.81, as evidence that the Respondent was testing the market before placing the insurance.
- 41.** Mr Butler submitted that it was for Mr Yau to prove that the premiums were unreasonable.
- 42. *The Directions of 29 September 2022 directed that Mr Yau should provide alternative insurance premium quotations on a like-for-like basis, comparable evidence from any broker contacted, and evidence as to the level of sum insured, as well as copies of alternative quotes upon which the Applicant wishes to rely. The only alternative provided by Mr Yau was the quote by Winchester Hawkins for the year to March 2020, which had been withdrawn. Mr Yau then extrapolated the Winchester Hawkins quote to provide an alternative quote for the year to March 2022. Mr Yau provided no alternative quote for the year to March 2023.***
- 43. *On the basis of the evidence that the tribunal heard from Mr Morley and Mr Casey the tribunal find that the premiums in each of the years in question were reasonable.***
- 44. *It is regrettable that the Respondent did not provide a Witness Statement. In particular it would have assisted the tribunal if it had provided a clear statement that neither it nor its managing agents had received commission from placing the insurance as it did, more detail as to how it has established the sum for which the estate should be insured (by way of a valuation), and more detail of the steps taken to test the market in each of the disputed years.***

## **Directors' liability insurance**

45. The Applicant challenged his liability to pay a share of the following Directors' liability insurance premiums
- £639 in the service charge year to 31 March 2020
  - £835 in the service charge year to 31 March 2021
  - £1,064 in the service charge year to 31 March 2022
  - £1,094 in the service charge year to 31 March 2023
46. Mr Yau gave evidence that before the Respondent had become responsible for the management of the estate the tenants had not been charged for directors liability insurance. He submitted that it was not recoverable under the terms of the lease and referred the Tribunal to the decision in *Wilson v Lesley Place (RTM) Company Limited* [2010] UKUT 342 (LC) (**'Wilson'**), in which it was held that the costs of establishing and running an RTM company could not be said to be incurred by a lessor carrying out its obligations under the lease and should be met by the members of the RTM company.
47. Mr Butler referred the tribunal to clause 4.1(3)(b) of the lease and the lessor's "absolute discretion" as to what is necessary or advisable for the 'administration of the Demised Premises and the Estate'. In its response on the Scott Schedule the Respondent had submitted that the directors are appointed to ensure the estate is administered in accordance with the leases and the relevant statutory obligations and that the directors are entitled to incur the cost of liability insurance to perform the role. The Tribunal heard evidence from Mr Morley that he had recommended that the directors effect Directors' liability insurance. Mr Butler submitted that Mr Yau had not challenged the reasonableness of these premiums, only whether he was liable to pay them.
- 48. The decision in Wilson made it clear that the liability of the tenant in respect of service charges is to be ascertained purely by reference to the terms of the lease.**
- 49. Clause 4.1(3)(b) provides,**
- 'The Lessor will do or cause to be done all such works installations acts matters and things as may in the Lessor's absolute discretion be necessary or advisable for the proper maintenance safety and administration of the Demised Premises and the Estate including in particular (but without prejudice to the generality of the foregoing) the employment of gardeners and porters and cleaners and the appointment of managing or other agents surveyors accountants and solicitors and the payment of their proper salaries and fees in connection with the supervision and performance of the***

***Lessor’s covenants and the enforcement of the Lessee’s covenants and the employment and payment of such employees contractors or agents at the Lessor shall think necessary in and about the performance of the covenants and provisions of this Lease...”***

50. ***The Tribunal find that under clause 4.1(3)(b) reference to ‘administration of the Demised Premises and the Estate’ entitles the Respondent to charge for directors’ liability insurance, provided that it is reasonable to do so, the Act superceding the stated ‘absolute discretion’. Given the evidence of Mr Morley the Tribunal find that it is reasonable for the Directors to effect liability insurance. That it was not effected by the previous freeholder does not make the charge unreasonable.***
51. ***As Mr Yau has not challenged the reasonableness of the premium charged in any year the Tribunal find the premiums charged to be reasonable.***

**Accounts Production fee**

52. The Applicant challenged his liability to pay a share of the following accounts production fees
- £3,600 in the service charge year to 31 March 2020
  - £3,600 in the service charge year to 31 March 2021
  - £3,600 in the service charge year to 31 March 2022
  - £5,000 in the service charge year to 31 March 2023
53. Mr Yau submitted that since the Respondent had been appointed the accounts had not been delivered in accordance with the timetable envisaged by the lease, and that the accounts for the year to March 2021 had been signed by directors who had not been directors of the Respondent during the service charge year in question.
54. Mr Yau submitted that William Wilson Chartered Accountant is a connected person to directors of the Respondent. He submitted that Section 28 of the Act defines a ‘qualified accountant’ as a registered auditor and a registered auditor is disqualified from acting as a qualified accountant if he/she is connected with the landlord or its agent. Mr Yau submitted that Chartered Accountants Ireland (CAI) had determined that the firm William Wilson was not independent, referring the Tribunal to a letter from them in the bundle as evidence of this, and that a proper tender process for the appointment of an independent auditor had not been followed.

55. Mr Yau also submitted that the fees were excessive, submitting that a more appropriate charge in the year to March 2023 would be £2,400. Mr Yau did not suggest what a reasonable fee would have been for the years to March 2020, 2021 and 2022.
56. Mr Butler referred the Tribunal to clause 4.1(3)(c) of the lease which provides that the accountants should be prepared and audited by “a competent and qualified person appointed by the Lessor”. Mr Butler submitted that the Respondent had appointed a competent and qualified person to prepare and audit the accounts. Although Mr Wilson is a chartered accountant, as recognised in the letter from CAI in the bundle, that is not a requirement of the lease.
57. The Tribunal heard evidence from Mr Casey that he believed that Mr Wilson had been appointed after a tender process which had involved approaching three firms, although there had been no retendering process since. He had been appointed as the Respondent wanted a forensic accountant following the Respondent being appointed to administer the estate. He was introduced by board members who knew of his local expertise, acting on other developments in the area. Mr Casey confirmed that the directors had no social relationship with Mr Wilson, the relationship was a professional one. He considered that Mr Wilson provided value for money.
58. Mr Butler submitted that Mr Yau’s argument that Mr Wilson was not independent was without merit and that he had provided no evidence that the fees charged were unreasonable.

59. ***Clause 4.1(3)(c) provides,***

***‘The Lessor will keep proper books of accounts of all costs charges and expenses incurred or deemed to be incurred by it in carrying out its obligation and shall prepare or cause to be prepared and audited by a competent and qualified person appointed by the Lessor annual accounts on 31<sup>st</sup> March in each year during the term and such annual accounts shall upon reasonable notice to the Lessor be open to inspection by the lessee and the same whether inspected or not shall be evidence of the expenditure incurred by the Lessor in performing its obligations under this Clause.’***

60. ***The Tribunal find that on the wording of clause 4.1(3)(c) the accounts do not have to be certified by a qualified accountant or a registered auditor. They have to be certified by ‘a competent and qualified person’. On the evidence before it the Tribunal finds that William Wilson is such a person. The Tribunal also find that nothing in Mr Yau’s description of William Wilson’s relationship with directors of the Respondent prevents him from being such a ‘competent and***

***qualified person'. The Tribunal find that the letter in the bundle before the Tribunal from CAI does not determine that William Wilson was not independent. It confirms that the CAI consider him to be a chartered accountant and does no more than state that the matter referred to it concerns the following disciplinary matter, 'That the member firm was not independent when undertaking a statutory audit'. The lease does not require the accounts to be certified by way of a statutory audit.***

61. ***That the directors who signed the accounts for the year to March 2021 were not directors of the Respondent during the service charge year in question does not invalidate those accounts.***

62. ***There may have been delays in producing accounts since the Respondent became responsible for these but that does not make the fee charged by William Wilson unreasonable. Mr Yau has provided no supporting evidence to substantiate his claim that a fee of £2,400 for the year to March 2023 would be reasonable and has not challenged the reasonableness of the fees in the preceding years.***

63. ***The Tribunal finds that the accounts were appropriately prepared and audited by William Wilson who was not connected to the Respondent, and that the fees charged in each of the years in question were reasonable.***

64. **Management Fees**

65. The Applicant challenged his liability to pay a share of the following management fees charged by JFM

- £30,647 (estate) and £1411 (carpark) in the service charge year to 31 March 2020
- £31,475 (estate) and £1414 (carpark) in the service charge year to 31 March 2021
- £31,913 (estate) and £1469 (carpark) in the service charge year to 31 March 2022
- £33,509 (estate) and £1542 (carpark) in the service charge year to 31 March 2023

66. Mr Yau submitted that the following were examples of poor management by the Respondent

- Failure to deal with correspondence in relation to the conversion of the flat to an HMO.

- Failure to issue validly independently audited certified accounts, or approved estate budgets
  - Failure to deal with the BSF funding application in a timely manner
  - Failure to advise on the estate insurance
  - Failure to comply with the RICS Service Charge Residential Management Code
  - Failure to carry out repairs and services effectively and efficiently
  - Failure to be accredited by RICS or ICAEW
67. Mr Yau proposed a reduction of 75% in the fees charged for each year in question.
68. Mr Butler submitted that Mr Yau was not challenging liability to pay a management fee but the amount of the fee on the basis that the services had not been provided to a reasonable standard. Mr Butler accepted that there were limited management issues but not sufficient to justify a reduction in the fees.
69. In its reply in the Scott schedule to the issues raised in the year to March 2020 (which replies Mr Butler stated applied to each year in issue) the Respondent stated
- That the majority of the leaseholders were satisfied with the service JFM were providing
  - That the Respondent and JFM had not ignored correspondence in relation to the HMO application. It is not permitted to convert the property to HMO under the terms of the lease and other leaseholders had objected to the proposed change. This is a matter for the Board of the Respondent not JFM.
  - JFM had provided budgets.
  - JFM did not agree that it had not undertaken the management services in accordance with proper estate management
  - JFM had carried out all repairs effectively and efficiently
  - JFM is not required to be accredited by RICS or ICAEW. It is a member of ARMA and the tenants have the further statutory protections.
70. Mr Casey gave evidence that the management fees charged by JFM were £12,000 less than those charged by the previous managing agents. That a Right to Manage company was appointed suggests that the estate was previously poorly managed. He stated that the fees charged were commensurate with those charged in the market. On the issue of the delay in dealing with the cladding of the estate Mr Casey stated that this was a matter for the Respondent not its managing agents, and that the BSF funding was outside the control of the Respondent as the Building Safety Fund had entered into an agreement with the original developer to undertake the necessary cladding works. On the issue of the

conversion of the flat into an HMO Mr Casey stated that this was a matter being dealt with by the freeholder's lawyers. It was not a matter for JFM.

71. Mr Butler submitted that the reasonableness of the fees was evidenced by the previous agents having charged higher fees. As to the competence of JFM he submitted that the Applicant having withdrawn an application to have them removed as managing agents was evidence that it could not be shown that they were not managing reasonably.
72. ***From the accounts in the bundle the Tribunal note that the previous managing agents, Rendall & Rittner Management, charged estate management fees of £40,296 in 2016, £41,827 in 2017 and £44,292 in 2018. The car park management fees charged by them were £1398 in 2016, 1,411 in 2017 and 1,411 in 2018.***
73. ***The Tribunal find that some of the complaints made by Mr Yau against the managing agents are not matters for which the managing agents were responsible, in particular dealing with his application to convert the flat into an HMO and the cladding works. It is concerned that the leaseholders were not informed of the underinsurance of the estate in 2020 but that was an action by the Respondent not JFM. Of the remaining issues the Tribunal has made determinations above as to the certification of the accounts and the reasonableness of the insurance premiums charged. Mr Yau has not provided substantive evidence of failure by JFM to deal with repairs effectively in a timely manner or failure to comply with the RICS Code. It finds that JFM are not required to be accredited by RICS or ICAEW and note that it is a member of ARMA.***
74. ***Mr Yau has provided no evidence to substantiate his claim that the fees should be reduced by 75% in each year. The Tribunal note the higher fees charged by the previous managing agents.***
75. ***The Tribunal find, on the evidence before it, that the managing agents' fees in each year are reasonable.***

#### **Application under s.20C and refund of fees**

76. Mr Yau submitted that it had been necessary to bring his application in the current financial climate and that accordingly a s20C order should be made .

77. Mr Butler accepted that it may have been necessary for an application to be made so that the issue of the reasonableness of the insurance premiums could be explored.
- 78. *The financial circumstances of the Applicant are not a matter to which the Tribunal should have regard when determining whether a s20C order should be made. The Tribunal notes that Mr Butler accepted that there was a reason for the Applicant to bring the application. It therefore makes an order under s20C of the Act so that none of the Respondent's costs of the tribunal proceedings may be passed to the lessees through any service charge.***
- 79. *Mr Yau did not request the reimbursement of his fees and the Tribunal therefore make no order in respect of these.***

**Name:** Judge Pittaway

**Date:** 28 March 2023

### **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).