FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MF/LIS/2022/0018**
Property	**:**	**6 Pearlville Court, 441 Reading Road, Winnersh, Wokingham RG41 5HU**
Applicant	**:**	**Michael Kondrollochis**
Representative	**:**	**unrepresented**
Respondent	**:**	**G & O Rents Limited**
Representative	**:**	**Urbanpoint Property Management Company Limited ("UPM"), by it's manager, Mr. Nath**
Type of application	**:**	**S27A of the Landlord and Tenant Act 1985**
Tribunal member(s)	**:**	**Judge. J. Oxlade Ms. Krisko BSc. FRICS**
Date of Hearing	**:**	**7th November 2023**
Date of decision	**:**	**8th December 2023**

DECISION

For the following reasons, the Tribunal finds that:

(i) the service charges referred to in Schedule 2 are reasonable and payable,
(ii) the Applicant shall not be reimbursed for the costs incurred by him in making the application, and other associated costs,
(iii) pursuant to section 20C of 1985 Act, the Respondent shall not be permitted to add to the service charge account any costs or other charges incurred by reason of participating in these proceedings.

For the reasons given herein, the Tribunal has made no findings on the items/expenditure referred to in Schedule 1, attached hereto.

REASONS

The background to these proceedings

1.The Applicant is the lessee of the premises, and the first owner of the flat; the purchase of the lease was completed in October 2013. It is located in a detached three storey building, containing 7 flats, subject to a lease which provides that the lessee's contribution to maintenance expenses ("service charges") is 13% of the costs incurred. Those expenses include insurance, gardening, and general maintenance, which all feature in this case.

2. From January 2014 Martyn Russel ("MR") were appointed to manage the building, which appointment continued until 14th June 2016. The Applicant disputed on account service charges (and ground rent) demanded by MR, and withheld payment of some of them because the demands were not complaint: the service charge demands were (i) made by email, (ii) failed to comply with the requirements of ss. 47 and 48 of the Landlord and Tenant Act 1987 ("the 1987 Act"), and (iii) did not contain a statement advising lessees of their rights.

3. In Jun 2016 the Respondent acquired the freehold and appointed Urban Point Management ("UPM") to manage the development. The Applicant continued to deny liability to pay for the sums originally demanded by MR, for want of complaint demands. This withholding was a strategic decision made by the Applicant to provoke someone to take notice of his concerns, though administration charges were levied on his service charge account for failure to pay. He withheld payment until the summer of 2023, when he paid on a "without prejudice" basis, and so without admission of liability. Additionally, from very early on the Applicant complained that the accounts were not audited in accordance with the lease. Recently, in County Court proceedings the Judge found that there was no positively enforceable covenant requiring the Lessor to audit the accounts, and so no cause of action in those proceedings brought by the Applicant – albeit that it is common ground that the lease provides that should the accounts be audited that then the costs of doing so would be recoverable by the Lessor (Part C, 6th Schedule, clauses 7.3 and 9). Against the backdrop of the Applicant's complaint about the lack of auditing, UPM arranged for the accounts for the years in dispute to be audited, and then added the costs of doing so to the 2022 service charge account in the sum of £4320; the Applicant now declines to pay the service charges because he says that the statement made by the auditor is not in accordance with section 21(5) of the Landlord and Tenant Act 1985, albeit that the lease does not refer to the auditing by reference to s21(5). It is noteworthy, that - save with one limited exception – the withholding of service charges is not related to the quality of the work done; rather, the Applicant puts in issue whether the cost is reasonable, and so payable as having been "reasonably incurred". Save with one exception, the Applicant does not dispute that the expense falls within the definition of the lease.

Hearing

4. The application was listed before the Tribunal for remote CVP hearing on 7th and 8th November 2023, at a time when there was an application for appointment of a manager listed at the same time. The parties agreed that an inspection was not necessary. The Directions made it clear that the parties should use their best endeavours to assist the Tribunal in concluding the matter within a day; as the application for an appointment of a manager was withdrawn, that direction was eminently reasonable and achievable.

5.The parties filed extensive bundles of documents, and witness statements setting out their respective cases. The Applicant represented himself, and Mr. Nath (property manager of UPM) represented the Respondent.

6. The parties completed a Scott Schedule; as intended, the document was central to the Tribunal's management of the hearing and decision-making; the document covered the years 2016 to 2022 and is found at pages B1056 - 1062. In view of the Applicant being in receipt of actual (not estimated) figures for 2022, the Applicant wished to add two items to the Scott Schedule identifying those being challenged: firstly, £4320 for auditing, as referred to in paragraph 3; secondly, £950 plus vat for an invoice (11264) for refurbishing a bin store. The Respondent was in a position to deal with those to two items, so the Tribunal agreed to consider them.

Jurisdiction of the Tribunal/Limiting the Issues

7. At the outset, the Tribunal sought to establish over what items it had jurisdiction and indicated that despite the Applicant's multiple concerns with the accounts and what was in them, we were not forensic accountants and we had no jurisdiction to "police" the lease.

8. The Applicant had put in issue - by including them within his Scott Schedule of "disputed service charges" for the years 2016 to 2022 – administration charges which were added to his account on account of his failure to pay as set out in paragraphs 2 and 3. However, as he has made no application pursuant to section 5 to Schedule 11 of the Commonhold and Leasehold Act 2002, the Tribunal decline to make findings about them absent of the correct application having been made.

9. During the course of the hearing, Mr Nath on behalf of the Respondent agreed that a number of invoices rendered by "On call" for general repairs were simply too high; the Applicant also agreed that the figures that he had proposed in the Scott Schedule were on the low side. Commendably, both parties adjusted their positions and achieved agreement on a suitable figure. The effect of this is that the Tribunal need make no decision on those agreed matters; for completeness, they appear in Schedule 2, to record the agreement made and which is binding on them both.

10. Further, it became apparent that two categories of invoices challenged by the Applicant did not feature in the service charge demands, and absent of a demand and issue of payability, the Tribunal had no jurisdiction; firstly, invoices 8156 (2019) for £600, 14431 (2022) for £1740, and 25048 (2022) for £5460, rendered by "On Call"; secondly, alternative accommodation costs paid by the insurance company, of £14978.70, £7321.86, £5460 (2022). As these invoices were all met by insurance claims, there was no service charge raised in respect of them. Whilst the Applicant wished to argue that these inflated costs fed into higher insurance premiums (a point we address later in this decision in the context of the reasonableness of insurance premiums), as the Applicant could not show that they impacted on the specific service charges demanded, the Tribunal had no jurisdiction to consider their reasonableness or payablity.

11. As detailed in Schedule 1 (d), the Scott Schedule contained items entitled "service charge accounts error" and "accounting error". However, as indicated above, the Tribunal's function is to consider reasonableness and payability of service charges, is not in a position to "police" the lease, and has no jurisdiction to make findings about whether or not the accounts contained errors or not. Accordingly, no findings are made about this.

12. The Applicant raised a significant concern - which invited a "steer" from the Tribunal. That is that the funds collected by UPM – being paid on trust to discharge the lessees obligations – should be ring-fenced in a separate account. Mr. Nath said that they were, but the Applicant says that from 2016 the accounts show that they were not. At the hearing when asked by the Tribunal, Mr. Nath indicated that he would be willing to provide the Applicant with bank statements to confirm the position and within 28 days of the hearing, to settle the issue once and for all. The Tribunal exercises no jurisdiction over this, but we observe that the RICS residential management code *requires* the recipient to state the name, address, account number, and name of all contributors, and that s42 (2) of the 1987 Act provides that any sum paid by way of relevant service charge shall be held "by the payee as a single fund or if he things fit two or more separate funds". It is clear that the ring-fencing of the funds has been written into the 1987 Act and the management codes, to safeguard the funds and to act as reassurance to concerned lessees. Further, as noted in the Country Court Judgement [B1220] the lease at Clause 3, of Schedule 10, the lease requires that the Lessor shall "ensure that the funds reserved to in the Sixth Schedule hereto shall be kept in a separate account". The Tribunal sincerely hopes that the Respondent has already addressed this point; should it have been lost in the myriad of knotty issues of this case, we emphasise the importance of doing so without delay, to avoid further enquiry on this point.

13.At the end of the hearing the Tribunal indicated that it would make a decision and promulgate it within 28 days; regrettably there is a little slippage in this timetable, but it remains within the six week service standard.

14. It is convenient to address the issues in turn, as we did at the hearing.

Gardening

15. In respect of gardening, the Applicant's case is that (a) before entering into a qualifying long term agreement ("QLTA"), there should have been consultation – which they were not - so that the failure to do so limits recovery of service charges, (b) in any event, the costs incurred were excessive: as shown in the service charge accounts they were £2968 (2017), £3319 (2018), £4741 (2019), £4455 (2020) and £4356 (2021).

16. In respect of consultation the Applicant makes the point that the same company (1st choice) was used throughout the entire 4-year period; by inference there must have been a contract for more than a year. They had been employed without a break and that fact alone does not support the Respondent's position that 1st choice were engaged on an ad hoc basis. Further, in November 2021 when the lessees raised the question of gardening, they were charged £336 for the Respondent to consider entering into negotiations on this point, which implies formal work to be undertaken. The claim to be able to terminate at will does not work in the contractors' favour; if terminated in the summer, - when the work is harder and more frequent, but the cost is charged the same – the contractor would lose out; surely, he would not operate on such a basis.

17. The Applicant says that there was/is no complaint about the quality of the work of 1st Choice - but they were too expensive. By way of comparison: in 2016 the sum which was included in the budget for gardening was £1680; Sunshine took over in 2022 (with the same number of visits) and they charged £1425 (incl. vat). The Applicant's belief is that the inflated costs arise because the Respondent's practice is to pick up the 'phone to a nationwide company, who pass out the work to other companies – which builds in a layer of additional cost. To the Applicant's mind, this is an abdication of management responsibility, as it contracts-out the responsibility.

18. The Respondent says that they used 1st Choice on an ad hoc basis; there is a preference for such an arrangement, so that they can terminate without notice if the company are not up to scratch. That is more effective than having a contract in place. The Company were chosen from a range of quotes provided, so there was informal tendering, and throughout the years 2017 to 2021 there were no complaints about the quality of the work (save if there were missed visits, which were arose because of poor weather) or cost. The figure used by the Applicant of £1680 (£140 monthly) was a budget figure rather than a final figure, and the 2016 accounts showed £2569 was spent - though Mr. Nath accepted on closer inspection that this figure of £2569 included cleaning. As for Sunshine - the scope of works is less as they are not required to report all maintenance maters; when pressed to give detail about the scope of Sunshine's contract he could not say exactly in what way it was more limited, and the email engaging them did not specify what they would do for their money. The additional benefit of 1st Choice was that they would always send photographs of their work, and this would ensure their work was up to scratch. He denied that 1st choice were a nationwide company – they work for companies that have a portfolio, though he accepted that there would be an additional layer of

management, premises, computers, staff etc. The key thing is that there is due diligence. He also made the point that when costs are lower, no one complains. As to the sudden increase in cost between 2018 and 2019, this was because the 2018 costs were lower due to missed visits due to bad weather.

19. For the following reasons the Tribunal finds that (i) there was no qualifying long term agreement for the years 2017-2021, (ii) the costs incurred during that period were not reasonably incurred, (iii) the reasonable annual costs, (including VAT) are as follows: 2017 - £1406; 2018 - £1412; 2019 - £1418; 2020 - £1419, 2021 - £1420, and (iv) finds that the service charge of £336 incurred in y/e 2021 for the managing agents consulting on the gardening question were not reasonable and payable.

20. There was no issue but that no QLTA document had been produced in evidence; at best the Applicant said that the Tribunal should be prepared to infer that the there was one in place - because of the length of service and lack of a break. However, those points themselves do not point away from the claimed "ah hoc" arrangement and point to a formal agreement for more than 12 months. Nor, do we find persuasive the Applicant's point that a summer termination would work against the contractor's interest, and so point towards a QLTA. Rather, we accept the Respondent's explanation for not entering into one; further, there was no suggestion that when the arrangements changed and Sunshine took over, that there was any delay to its start because of the termination of a contract with 1st Choice. Further, the Tribunal infrequently sees LTQA for gardening services, not least because if a contract of 12 months or less is entered into, the consultation requirements are not invoked. Therefore, we do not find that there was in place a QLTA.

21. However, we do find that the service charge costs for gardening for the period 2017 to 2021 were unreasonably incurred. The figure budgeted for in 2016 was £140 p.m. (so £1680 p.a.); the costs in the accounts of £2569 for cleaning and gardening in 2016, are comparable - if cleaning is stripped out using the 2017 cost of £1114.00 as a guide – and suggest costs were approximately £1455. The annual costs in 2022 from Sunshine were £1425 p.a. Though the Respondent says that the remit of 1st Choice was greater (and we have a list of their tasks) and so can legitimately charge more, absent of evidence as to what Sunshine are tasked to do, the Respondent cannot say that the brief is different. The reference to 1st Choice reporting back by photographs as a distinction, does not take the matter much further, as the chain of email correspondence suggests that this was mooted and Sunshine agreed to do so on a monthly basis.

22.The Tribunal was not satisfied that taking into account the views of Lessees on the subject of gardening, then inviting fresh quotes, and choosing Sunshine falls outwith the usual management functions, and so conclude that the sum of £336 is not reasonable or recoverable.

23. Accordingly, the Tribunal finds as reasonable and payable the following annual gardening costs for the service charge years 2017 to 2021 (including VAT) 2017 - £1406; 2018 - £1412; 2019 - £1418; 2020 - £1419, 2021 - £1420.

Insurance

24. In respect of annual buildings insurance the Applicant says that the costs are simply too high: annual premiums were £1440.41 (2016), £1519 (2017), £1577 (2018), £1715 (2019), £1847 (2020), £2320 (2021), and £4274 (2022), and so the service charges were not reasonably incurred.

25. The Applicant had four key points: the re-build value was too high, at £1.5m, rather than £1.2m; the freeholder had entered into a block policy, which was not favourable to this block, as large claims on other buildings would increase the cost of premiums on this block; the claims history on this building was recently too high, because the Respondent would use "On call" who charged too much, and so costs were allowed to spiral; finally, the top level cover had been chosen, which was unnecessary, and encouraged hands-free management.

26. As to re-build value, the Applicant had undertaken his own analysis, establishing the value of his flat using the free on-line BCIS calculator, and factoring this upwards because the building had 7 flats. He undertook a comparison with another flat that he owns ("Highgrove"). This exercise was necessary, because the Respondent had re-valued the re-build property in 2022, in which the valuation had manifestly failed to assess accurately the square meterage; it said that the size was approximately 547 sqm, whereas an earlier one thoroughly undertaken in 2016 said that it was 469 sqm. The rebuild value was said in 2016 to be between £753,000 and £941,000 and in 2022 was £1.5m. The cover was over and above what was necessary; they had chosen 10 points, whereas only a maximum of 3 were necessary, if there was more hand. As to the top level cover selected, he showed what the impact would be if middle level cover had been secured (having approached the very same insurance companies to obtain quotes to illustrate the point) much was unnecessary and could be replaced by good management strategy on management. He cited a fire report, which had not been acted upon as to fire extinguishers on each level; on re-reading, the Applicant had misread the point.

27. Mr. Nath said that UPM do not get involved in the insurance question; they had been supplied with information by the freeholder, who organises and places the insurance; UPM are not experts on this and observed that had the Applicant wished to challenge the insurance premiums, then he should – but did not have – and up-to-date professional valuation to rely on; rather, he had undertaken his own analysis but the BCIS assessment was rudimentary and did not (by virtue of valuing the flat itself) include the costs of the foundations and the roof, and site clearance. It was not a safe or reliable way of assessing the building. The lease requires that the insurance be taken against an "all usual risks" and other risks which the Lessor should reasonably decide in the full reinstatement value. The lease requires that the policy covers not only costs of

demolition and clearance of buildings, but the reinstatement of the same, together with professional fees.

28. Further, the condition precedents maybe open to criticism, but UPM/the Lessor cannot know at anyone time whether or not a flat is occupied or empty, and whether or not the flat is owner/occupied or sub-let as here; by objectifying the cover, it eliminates areas of concern. He pointed out that B369 - one of the Applicant's quotes - requires that there be no county court judgements in the preceding 5 years; the Lessor cannot make a constant check on the individuals record, without considerable and unnecessary research. It benefits no one to cut corners. As to the block policy, the Applicant complained that this was a blunt tool, and that the lessees were punished for being grouped with other blocks; but, this cuts both ways, the Applicant also recognised that the recent poor claims history of this block benefitted from being disbursed across the portfolio.

29. As to the recent poor claims history of this building - feeding into the insurance premium - it was not possible to say exactly what impact it had, but if the costs of On-call exceeded what were reasonable, then he did not accept the assertion made that the loss adjusters would pay unreasonably high costs. They had two quotes for each item of expenditure, and the insurance company will not simply sanction costs without checking. Insurance costs had increased across the board - nothing can be done about that: the costs of reinstatement has increased across the board because wages are higher and costs of material post-pandemic have increased, as had utility and other costs. The large cost in 2022 was due to reinstatement costs having been recalculated, as the indexing had been underestimated in the past, so there was an element of catch up.

30. The Tribunal finds that the insurance costs contained within the service charges demanded were reasonably incurred. The starting point is that the lease requires that the Lessor insures the building; it projects his interest, as well as the Lessees interest. Except on matters which are prescriptive, the Lessor has a relatively free hand in deciding what risks to cover and how he goes about it. Here there was no argument made by the Applicant that the policy secured was not in accordance with the terms of lease – rather it was that the outcome was too high, which caused the Applicant to look further into it, and to challenge the points noted above.

31. It is clear from the evidence filed that the Respondent has had the reinstatement costs recalculated and he has a surveyor who has taken responsibility for it; they have then gone to market, and obtained various quotes; this is sufficient due diligence. The Lessor is not obliged to select the cheapest quote. This was undertaken in a period of high inflation, and there is good reason not to downplay costs, which can leave all in a difficult position. The Tribunal has knowledge and experience of the impact that this has had on insurance during this period, and the increasing costs are in line with the prevailing position. We appreciate that the Applicant has done his best to look at this from all angles; however, it is true to say that one cannot simply take the

value of a flat and multiply up, as it does not account for roof and foundation costs, clearance of site and professional fees.

32.The Applicant wished to rely on a poor claims history for this building due to over-inflated costs, but in the Tribunal's knowledge and experience of claims on buildings insurance, the level of scrutiny is such that there will not be overpayment. In any event, the block policy which insulates this block from a suddenly worsening history, diminishes the relevance of this point. Though the Applicant criticised the Respondent for taking out a block policy, so increasing costs, we are not satisfied on the evidence that this has been made out as the factor which has made a difference to the costs passed onto the Lessees; in itself a block policy is not an objectionable approach.

Auditing

33. The Respondent's practice had been to undertake a certification of the service charge accounts, at an annual cost of £250-260, but not an audit. The Applicant's position had consistently been that a failure to audit the service charge accounts meant that the service charges demanded were not payable; he issued proceedings in the County Court on that (and other points). In the face of that, the Respondent decided that it would undertake an audit of the years 2016 to 2022 at a total cost of £4342, and which were added to the service charge account in 2022. DDJ Bradfield held [B1219] that the lease contained no positive obligation to audit the accounts, and so there was no cause of action; albeit that the lease does provide that should the Respondent do so the costs are recoverable as a service charge. The Judge also noted that any cause of action would have fallen away as the accounts were in fact audited in February 2023. The Judge noted that the Applicant's challenges had moved onto whether the certificate was valid and whether Mr. Mahmood was genuinely qualified. That latter point was not maintained before us.

34. However, in these proceeding the Applicant continued to challenge the payablity of the service charges and the audit costs on the basis that the statement of the auditor is not in accordance with s21(5) of the 1985 Act. A sample of the statement is found at B1013.

35. The Tribunal finds that s21 of the 1985 provides the lessee with the mechanism to obtain information from the lessor; this is over and above the obligations contained within the lease; absent of compliance, there can be a complaint to the magistrates court, and service charges can be withheld. Here the Applicant's has not made a s21 request, and so we are not dealing with that. The Applicant's compliant is that the statement does not suggest that it has been signed off as audited with a correct statement. However, the lease does not provide a definition of "audited" and so does not prescribe a standard; the Tribunal is not aware of any legislation which prescribes a statement of wording, nor was any brought to our attention by the Applicant. Nor does the Applicant say that there was a defect in the auditing of the accounts. The s21 procedure is entirely different to the provisions and obligations under the lease, and we do not consider that this certification in any way undermines the

reliability of the audit. The Applicant has not challenged that the sum itself was not reasonable. The Tribunal finds that the sums were incurred and recoverable under the lease and that the accounts were validly audited.

On call costs

36. The Applicant challenged as reasonable the payablity of service charges arising from On calls replacement of fencing/trellising on the basis that it was too high, though there was no criticism as to the standard of works. Further, in respect of the refurbishment of the bin store and additional point was that as the roof covering was not curled under and back, the shortcut meant that the work would not last.

37. The Tribunal had access to each invoice, and the photographs showing the completed work. Further, the Applicant provided evidence from check-a-trade and Wickes of the cost of materials. The Respondent relied on alternative quotes to show that On Call were not more expensive, but on a par with other contractors.

38. In respect of the work giving rise to invoice 5765 (in 2018) [B526], this was in respect of replacement of two pieces of trellising, the re-fixing of one trellis panel, re-fixing two fence panels after the removal of some foliage. The Applicant obtained an on-line estimate of the cost of materials of £21 per trellis panel, and a check-a-trade hourly rate of £30. We do not consider that the work can have taken more than 8 hours. The Tribunal calculates that a reasonable cost of £322.80 (incl vat) for the work done.

39. In respect of work giving rise to invoice 8218 (in 2019) [B560] this involved replacement of two new stand posts, two metal posts, new plane boards and battons, and repair of fence panels, and involved two men attending on two separate visits. We were told that this would involve two visits as concrete would need to set, but we did not accept this, as quick drying cement can be used. As referred above, there are comparable costs contained in the Applicant's bundle, and we find that a total cost of £340+vat is reasonable and payable.

40. In respect of work done giving rise to invoice 8573 (in 2020) [B613] for repainting 3 door frames, at a cost of £360, the Tribunal prefers the Applicant's evidence; this would involve work done in stages, as the layers would be build up, but this would be done in between other jobs/functions, and would not involve the time taken to justify the equivalent of wages for 1 ½ days. The Tribunal agrees with the Applicant's analysis, and concludes that the sum of £144 (including VAT) is reasonable and payable.

41. In respect of the work done giving rise to invoice 25035 (in 2022) this involved replacement of five fence panels and posts. The Applicant established that check a trade would charge £200 per fence panel. It follows that after disposal of existing panels, we find that the sum of £1440 (incl VAT) is reasonable and payable.

42. The Applicant challenged as reasonable the costs of £950 for restoring a bin store, not least for a poorly replaced roof covering. It is reflected in invoice 11264 (in 2022). There is no issue but that the covering is poor, albeit that this was notified late to UPM; it seems unlikely that the roof will last. On this point we prefer the Applicant's evidence as to what costs are reasonable and payable, and find that the sum of £472.80 (incl vat) is reasonable and payable.

Other matters argued as affecting recovery of service charges

43.The Applicant has long-argued that the service charge demands made by MR (as explained in paragraph 2 above) totalling £1389 were non-compliant, and so irrecoverable until compliant with sections 47 and 48 of the 1987 Act. Further, both (i) s20B of the 1985 Act precludes recovery where the Lessee was first notified of the costs more than 18 months after the date that the costs were incurred, and (ii) as costs were incurred in the period 2014 to 2016, there is an additional hurdle in the form of the Limitation Act 1980.

44. In reply, Mr. Nath said that UPM were prepared to concede that MR's demands had been non-compliant and were not effective; however, UPM had made further demands on 30th August and 2nd November 2016 - so redemanded the service charges (pages B114 – B118) with compliant demands. Further, this had been explained to the Applicant (B 373), and though he had agreed that he had been so served (B375) his view was that it should have been MR not UPM doing so.

45. In our view, it appears from the detail of the demands made by MR and re-demands made by UPM that the sums involved were for payment of ground rent and service charge payments on account, and that the demands made by MR were not compliant. However, we find that – contrary to the position taken by the Applicant – it was entirely open to UPM to re-serve them, as they were then acting as agents of the freeholders. It did not require MR to do so, indeed, they could not do so as their agency was terminated. We find that they were lawfully re-demanded in 2016, that whilst it could be argued that this fell outside the 18 month period for some of the expenditure, this limitation on recovery does not apply where the lessee was notified of the cost within the 18 month period of it being incurred, as occurred here. Clearly, the defective demands operated to notify of costs to be recovered, though they were not effective as a demand. That being so, the s47 and 48 non-compliance was remedied, and became payable at that point (in 2016). The limitation period point does not save the Applicant from liability to pay, because the lease is a liability to pay under a deed, and the limitation period is 12 years. That being so, these compliance points do not save the Applicant from liability to pay.

Ancillary applications

46. At the end of the hearing we considered two applications: firstly, whether to permit the Lessor to add its costs incurred in these proceedings to the service charge account (which the lease permits) or whether to make an order pursuant to section 20C of the 1985 Act preventing it from doing so; secondly, whether

the Applicant should be reimbursed for his out of pocket expenses in preparing bundles and the fees is making the application and for listing, pursuant to regulation 13 of the Tribunal's procedure Regulations.

47. As some of the Tribunal's findings were made in favour of the Applicant and some in favour the Respondent we consider that (i) it is just and equitable for the Respondent to bear its own costs, and so make a s20C order preventing costs being added to the service charge account, and (ii) that there is no basis to suggest that the Respondent has been unreasonable in defending the proceedings, and so make no order that there should be any reimbursement to the Applicant.

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Judge J. Oxlade

8th December 2023

SCHEDULE 1

For the reasons given in paragraphs 8, 9, 10 and 11, above, the Tribunal has not made a determination in respect of:

(a) *administration charges* added to the Applicant's service charge account for failure to pay service charges, for the reasons explained in paragraph 3 of the body of this decision,
(b) *costs expended on the building*, which have been met by the insurance company, namely, invoice 8156 (2019) for £600 and 14431 (2022) for £1740,
(c) *alternative accommodation costs* incurred by the insurance company, £14978.70, £7321.86, £5460 (2022),
(d) *errors in service charges accounts*: £362.50 (2016), £38.20 (2017), £28.48 (2018), £66.42 (2019), £64.01 (2020), £228.66 (2021), and £944.26 (2022),
(e) "*On Call*" costs agreed as reasonable and payable: invoice 8285 (year 2020) agreed £600 (incl. vat), invoice 8491 (year 2020) agreed £150 (incl. vat), invoice 8572 (year 2020) agreed £300 (incl. vat), and invoice 8574 (year 2020) agreed £300 (incl. vat).

Schedule 2

The Tribunal hereby records that the following service charges are reasonable and payable: in respect of

(i) *gardening*, the following annual costs (incl of vat) are reasonable 2017 - £1406; 2018 - £1412; 2019 - £1418; 2020 - £1419, 2021 - £1420;
(ii) *garden consultation charged at £336*, there should be no charge;
(iii) *insurance*, the following annual costs are reasonable: 2016 - £1440.41, 2017 - £1519, 2018 - £1577, 2019 - £1715, 2020 - £1847, 2021- £2320, 2022 - £4274;
(iv) *"on call" invoices*: invoice 5765 (in 2018) £322.80 (incl vat); invoice 8218 (in 2019) £340+vat; invoice 8573 (in 2020) £144; invoice 25035 (in 2022) £1440; invoice 11264 (in 2022) £472.80 (incl VAT).