FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/LSC/2020/0091**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flats 1 and 2, 57 Lansdowne Lane, London SE7 8TN**
Applicant	**:**	**Miss Amy Price (flat 2)** **Miss Elaine O'Donnell (Flat 1)**
Representative	**:**	**In person**
Respondent	**:**	**Marathon Holdings Ltd (a charity registered in the West Indies) (1)** **Mr Kai Richardson (2)**
Representative	**:**	**Mr Jay Williams of PB Construction (a company registered in Nevis, West Indies)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Brandler** **Mrs L Crane, Professional Member**
Venue	**:**	**10 Alfred Place, London WC1E 7LR** **By remote video hearing**
Date of hearing	**:**	**22nd January 2021**
Date of decision	**:**	**22nd February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in the applicants' 147-page bundle, the contents of which we have noted. The order made is described at the end of these reasons. The parties said this about the process that they were content they had been able to tell the Tribunal everything they wanted to say.

Although the applicants both joined the hearing by video remotely, the respondent, Mr Williams, joined by telephone only.

Decisions of the tribunal

(1) The tribunal determines that the sum of £0 is payable by the Applicants in respect of the service charges claimed by the Respondents for the years 2016-2019.

(2) The tribunal makes no determination in relation to service charges for the years 2019/2020 which have to date not been demanded.

(3) The tribunal makes the determinations as set out under the various headings in this Decision.

(4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(5) The tribunal determines that the Respondents shall pay the Applicants £300.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The application

1. The applicants, Miss Price of Flat 2, and Miss O'Donnell of Flat 1, seek a determination pursuant to s.20B of the Landlord and Tenant Act 1985 on the basis that no service charge demands were made within the requisite time, or at all. In the alternative, they say, there is no evidence that any of the works claimed by the respondents have been carried out at all and by virtue of s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), these are not payable. The application relates to service charge years 2016-2020.

2. A case management telephone hearing took place on 29th October 2020 [20]. Both the applicants were in attendance, as was Mr Williams for the

respondents. Both parties agreed at that time to mediation. Subject to the return to the Tribunal of signed agreements to mediate the tribunal would have sought to make its mediation service available to the parties, by way of video conferencing, on a date to be advised. The parties were made aware, that the directions must be complied with in any event, unless the parties reach agreement on all issues at the mediation session.

3. No mediation took place. The applicants returned their mediation form. The respondents however did not.

4. In preparation for a hearing, the applicants complied with the directions. The respondents however did not. The applicants wrote to the respondent on 5.12.2020 by email to record the respondent's breach [140]. No response was received from the respondents. The tribunal case officer then wrote to the respondents on 7.12.2020 asking them to contact the tribunal within two days to explain why they had not complied with the directions, and what steps they propose to take to comply with directions, ensuring that the hearing date is not affected. That letter also provides a warning that if they do not reply, the Tribunal may bar them from taking further part in the proceedings. [142]

5. A flurry of email activity from and on behalf of the respondents commenced at 16.52 hours on 20.01.2021. The first email was from Counsel, requesting an adjournment of the hearing listed for 22.01.2021. No explanation of the lack of compliance with directions was included in that email. The email indicated that Counsel had been recently instructed by solicitors, and that because he was on the warned list for a criminal matter at 10 a.m. on the same day as the listed hearing, he would not be available. His email provided dates for his availability for an adjourned hearing to be listed. The judge considered the application, and directed the Tribunal clerk to respond stating that the request to adjourn was refused as it was not in the interests of justice having regard to the history of the case, and the late contact.

6. An email from Mr Kai Richardson was received at 13:18 on 21.01.2021, asking the tribunal to take into account various issues relating to COVID in general, but with no detail about how this had an effect on the case, and asking that their barrister be given the opportunity to "*refute the applicants excuses for not paying no Ground Rent or service charges for 4 years at an adjourned hearing*". Again, no reference was made to the lack of compliance with directions. The Judge again instructed the clerk to write expanding on the previous email and an adjournment was refused.

7. On the morning of the hearing, an email was received from Mr Valentine Edeko. He is the non-resident leaseholder of the lower ground floor flat in the building. He is not a party to these proceedings. In his email timed at 22:52 hours on 21.01.2021, he requests that the hearing be adjourned, alleges that the application is bogus, and that the managing agents are

wonderful. In addition, he claims that the applicants owe £10,000 to UNICEF for all the hard work carried out by Mr Richardson. As Mr Edeko is not a party to the proceedings, no response was sent to him. In any event, nothing material was provided in this email.

8. That was not the end of the late contact by the respondents. At 09.19 hours on 22.1.2021 an email was sent to the Tribunal from Premiere Services, containing an electronic bundle of documents. The Tribunal Clerk informed the tribunal panel. Prior to determining whether or not to consider this late evidence, the Tribunal invited Mr Williams to make an oral application to the Tribunal in this regard at the beginning of the hearing.

The hearing

9. The Applicants appeared in person at the hearing by video link. The Respondents were represented by Mr Jay Williams from PB Construction, who had been the managing agents, until 24.11.2020, of the building at 57 Landsowne Lane, London SE7 8TN ("The building"). A RTM company now manages the building from that date. Mr Williams explained to the Tribunal that he had been involved in this business for 20 years, and the company manages 7 leaseholder buildings. Mr Williams was unable to join the hearing by video link because he said he did not have a webcam or a 'smart' 'phone. He was connected to the hearing by telephone only.

10. Prior to the commencement of the hearing, the tribunal dealt with two applications. The first from Mr Williams seeking permission to adduce late evidence submitted by email at 09.19 hours on the day of the hearing, the second by the applicants seeking an order to bar the respondents from taken any part in the hearing on the basis of their breach of the directions ordered on 29.10.2020.

The respondents' application to admit late evidence in the form of an electronic bundle of documents received by the tribunal clerk by email at 09:19 hours on 22.01.2021.

11. Mr Williams in his oral submission claimed that he had stepped in to represent the respondents at the last minute when their barrister had to attend a matter at the Crown Court. He explained that he does not manage any paperwork and is only a labourer. When asked about the late bundles, he confirmed that he was responsible for the two emails at 09.19 that morning containing the respondent's bundle as an attachment. The email was sent from 'premiere services'. Mr Williams confirmed that Premiere Services is not a company, it is just an email name used for occasional correspondence emails. For example, if they need to email someone about work required or if someone wants to send some photographs. When asked by the Judge if this was his building company, Mr Williams said it was not, that he was a sole trader, although

confusingly he also stated that he had worked for PB Construction for 20 years, and the company managed many other blocks. When pressed on how many they manage, Mr Williams response was 7. Only one of these is owned by the respondents.

12. Mr Williams confirmed that he had taken part in the telephone directions hearing on 29.10.2020 and although he was aware of the directions, he said it is not his job to do anything about them. He told the tribunal that Mr Richardson was supposed to do the paperwork, but that he had been very ill for the last year with COVID-19. Mr Williams could not tell the Tribunal when Mr Richardson had been diagnosed, or whether he had been in hospital, stating that he was not sure. He did however confirm that Mr Richardson had put together the appeal bundle sent by email that morning, but he did not know when that had been prepared. The only facts Mr Williams said he was sure of were the works that had been carried out at the building.

13. Mr Williams was asked when a solicitor had been instructed. His response was that he was not "*100% sure*" and could not give any indication of when that had been. He confirmed that Duncan Lewis had been instructed, but there did not appear to be anything on record from that Firm.

14. Mr Williams was asked when the barrister was instructed, he again said that he didn't know. When asked why they had not instructed another barrister when their first choice became unavailable, his response was very unclear. He stated initially that they could not afford to because they had been charged by the barrister prior to him having carried out any work, and there were no more funds to instruct another barrister.

15. When asked to explain why the bundles are so late, and why the Tribunal should consider this evidence, Mr Williams response was that was a matter of justice, that he had personally worked at the property, and that they hadn't been paid. He went on to state that the service charge arrears amounted to £10,000 and that sum is not payable to him personally but is payable to UNICEF. He claimed that all the evidence is in the appeal bundles which included witness statements. His reason for the respondents producing the evidence so late was that Mr Richardson had been ill and struggling due to COVID, and that they had had insufficient time to prepare bundles.

16. In response, Ms Price stated that this application had been lodged in February 2020, and that there had been no mention of Mr Richardson having been ill prior to today. Ms Price referred the Tribunal to an email dated 14.12.2020 from Mr Richardson [146] in which no mention is made of any incapacity. Nor was there any mention that bundles of documents were going to be submitted late. She made the point that the respondents had 11 months to prepare the case and that Mr Williams had

been a party to the directions hearing on 29.10.2020 at which he requested longer deadlines, which was agreed by the Tribunal Judge.

17. After a short adjournment, the Tribunal delivered judgment as follows:

18. Having considered the submissions, the Tribunal concluded that no valid reason had been given to explain the late submission of evidence only 40 minutes prior to the hearing. Mr Williams was not able to explain when Mr Richardson became ill or whether he had been hospitalised. Nor could he explain why Mr Richardson had not mentioned this in his email of 14.12.2020 [146].

19. The Tribunal were satisfied that the respondents, having been involved in the directions hearing, knew the contents of the directions order, including deadlines. Further, that the respondents are a management company, managing at least 7 buildings, indicating that they are professional property managers.

20. On balance the Tribunal found that the new bundles of evidence, submitted by email at 09.19 on the morning of the hearing are inadmissible as late evidence.

The Applicants' application to bar the respondents from taking part in the hearing

21. In her oral submission, Miss Price reminded the Tribunal that the respondents had failed to engage with the process since the case management hearing on 29.10.2020, stressing that this form of behaviour of non-compliance has been the respondents' manner of managing the building for the past 4 years. Instead of complying with directions, they have asked for an adjournment of this matter on the day before the hearing, and when that didn't work, they submitted a bundle of evidence 40 minutes prior to the hearing. She asks that they be barred from taking part in the hearing.

22. Mr Williams in response states that the respondents should not be barred because it has been an "*absolutely crazy year"* and that he first knew about this matter when he stood in at the last minute and attended the hearing on 29.10.2020. He said they were struggling to get to jobs, and that although wearing masks was not as bad as it is for NHS nurses, to expect non-professionals to put together papers is no match. He continued to say that Mr Richardson was ill and that they have no expertise in paperwork, and that just because Mr Richardson had not written down what payments were due to Unicef, he could not see how the respondents could be barred. He stated that as a matter of justice, in the interests of justice, he should be allowed to contest all the points that will be made at the hearing. Stating also that of all the other properties they manage, the applicants in this case are the only ones who don't pay.

All of the other leaseholders they manage, he says, are like friends to them.

23. After a short adjournment, the Tribunal delivered judgment as follows:

24. By Rule 8(2)(e) of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013, when there has been failure to comply with rules, practice directions or Tribunal directions, "*..the Tribunal may take such action as the Tribunal considers just, which may include – (e) Barring or restricting a party's participation in the proceedings"*

25. The Tribunal found that there had been a flagrant breach of all the directions aimed at the respondent, ordered on 29.10.2020. To compound this, the respondents had attempted to obstruct the course of justice by seeking to adjourn the hearing at the last moment for no valid reason, and to introduce late documentary evidence, which if admitted would have had the effect of having to adjourn the hearing.

26. Whilst the Tribunal acknowledges that problems caused by the pandemic, Mr Williams was unable to explain how it had been responsible for the respondent's lack of compliance with the directions leading to this hearing.

27. Having regard to all of the information, the Tribunal decided to restrict Mr Williams participation in the hearing, permitting him only to test the applicants' evidence that was before the tribunal.

The background

28. The application is made by the leaseholder owners of flats 1 and 2 of the building which contains 3 flats. The leasehold owner of the lower ground floor flat has played no part in these proceedings, other than his email to the tribunal on the day of the hearing.

29. The Applicants hold long leases of the properties, as follows:

(i) Flat 1, by a lease dated 4th July 2008 between Hennessy Construction Limited (1) and Tribeca Sage Limited (2) for a period of 125 years from 29.09.1996, which was assigned to Elaine O'Donnell on 03.06.2016.

(ii) Flat 2, by a lease dated 4th July 2008 between Hennessy Construction Limited (1) and Tribeca Sage Limited (2) for a period of 125 years from 29.09.1996, which was assigned to Amy Elizabeth Price on 10.07.2017.

30. Both leases are similar in terms and require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases, including

the service charge mechanism, will be referred to below, where appropriate.

31. The freehold interest of the building at 57 Lansdowne Lane, Charlton London SE7 8TN ("The building") is owned by Marathon Holdings Limited (incorporated in British Virgin Islands) care of Asb Law, Horizon House, Eclipse Park, Sittingbourne Road, Maidstone, Kent ME14 3EN.

32. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

33. Having confined the respondent to testing the applicants' evidence, as set out above, the issues for the tribunal were to investigate each head of service charge demanded for the years 2016-2020.

34. The applicants having confirmed that they have paid all of the ground rent due, this was no longer in issue.

35. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Buildings Insurance for the service charge periods 29.9.2016-28.09.2019 – sums claimed £898.16 Flat 1; £697.35 Flat 2

36. The applicants have asked the respondents to provide a properly constituted service charge demands in compliance with the 1985 Act together with evidence of expenditure and details of the insurance policy.

37. The first demand received by Miss Price (Flat 2) was by email from Richardson_kai@yahoo.com dated 4.10.2019 at 23.30 hours [52]. The first demand received by Miss O'Donnell (Flat 1), also from Kai Richardson on 4.10.2019 at 23:40 hours [53]. These emails are in similar format requesting that payments are made by BACS to PB Construction with no breakdown of the charges claimed for each of the service charge years. Mr Williams during the hearing could not clarify what role Mr Richardson holds, claiming at the end of the hearing that Mr Richardson holds no role within either the freeholder or the managing agent company. Instead, Mr Williams describing him as "*just helping out*". He could not, or would not clarify the position further.

38. The email demands, without a breakdown, sums for the service charge periods 2016/2017, 2017/2018 and 2018/2019. The Applicants by email

on 7.10.2019 [55-56] challenged receipt of any previous demands, questioned the account holder and challenged the carrying out of any works in relation to the leak from the roof and the overgrown tree.

39. The respondent replied, stating that they do not need to provide proof and that "*official proof can be shown to you via the Company's solicitors but please note that all legal work would be chargeable by solicitors at the rate of around £300 per hour plus*". [58]

40. In response to the applicant's request for PB Constructions full name and contact details, the response is "*PB Construction c/o The Studio, 20 Chestnut Rise, London SE18 1RL. Prior to solicitors considering your request for further information the managing agents would need to hold your passport and bank statement address proof for proof of identifications*". [58]

41. In response to a request for a copy of the building insurance for the property which notes the applicants as interested parties, the respondents state "*Axa are the Insurance Company. However, Ground Rent and service charge arrears really ought to be cleared prior to solicitors undertaking further work in connection with this, I hope you agree*" [59].

42. In oral evidence the applicants confirmed to date no insurance policy or details of a policy number had ever been received by them. Miss O'Donnell explained that she had obtained a document covering the period 11.5.2019 expiring on 10.5.2020 indicating that the building was insured, however, much of the document was redacted. She made enquires with the insurance company noted on that document, but having given them the address of the building, that company could not confirm that the building was insured by them. They did confirm that they did not recognise the policy number. A copy of that document was not in the bundle.

43. Under the newly constituted RTM company the applicants have insured the building. Mr Williams stated that PB Construction were still insuring the building, even though they are no longer the managing agents. In his questions to the applicants, he was concerned only with the sum of the new RTM insurance policy, which he says is more expensive that the previous policy.

44. The tribunal's decision

45. The tribunal determines that the amount payable in respect of buildings insurance claimed for the periods 2016-2019 is £0. .

Reasons for the tribunal's decision

46. The applicants are obliged by clause 3 of the lease to pay a sum towards the expenses and outgoings incurred by the lessor for the insurance of the building, as set out below. However, the respondent has failed to provide any evidence of the existence of an insurance policy, other than the demands for this item.

47. By the respondents' own evidence they say "*Axa are the Insurance Company. However, Ground Rent and service charge arrears really ought to be cleared prior to solicitors undertaking further work in connection with this, I hope you agree*" [59] and this supported the applicants' assertion that no evidence of an insurance policy had ever been sent to them.

48. The tribunal found the applicants to be credible and consistent and on balance accepted their assertion that the respondents had failed to date to provide evidence of a valid insurance policy. Of concern to the Tribunal was Mr Williams' oral assertion that PB Construction are still insuring the building even though they are no longer the managing agents. This was further evidence of poor property management.

49. The Tribunal were not impressed with the Respondents' response [58-60], which continued to evade the issue of provision of details of the insurance policy, as well as other information. Rather than providing the information requested, the respondents suggested that their solicitors would advocate forfeiture proceedings against the applicants [60].

50. Having considered all of the evidence, the tribunal were not satisfied that a valid insurance policy had been in place. There is no evidence to support the claim for this item. Even if the Tribunal are wrong on this point, and there was a valid insurance in place, the sum claimed for this service charge item has not been demanded in compliance with s.20B Landlord and Tenant Act 1985. £0 is payable by the applicants in under this heading.

Roof repairs / gutters – Service charge years, 2016/17, 2017/18 2018/19 - sum claimed: Flat 1 £743.79 ; Flat 2 £ 720.51

51. Service charges under this heading are claimed for each of the above periods. As set out above, the first demand for service charges was made on 4.10.2019 without any breakdown [52-53] and the subsequent demands are non-compliant with the 1985 Act. The applicants further assert that no works have been carried out on the roof at all. There has been no evidence of scaffolding or anyone on the roof. No invoices have been provided or breakdown of the charges set out under this heading [65-70]. Miss Price in oral evidence stated that the roof leak continues intermittently. There is no evidence of gutter cleansing.

52. Mr Williams in an attempt to question this assertion states only that roof works have been carried out.

53. In correspondence from the Respondents in relation to the state of repair of the building and the request for itemisation of the expenditure, the reply purporting to be from Mr Richardson states *"itemisation of all expenditure is not a problem however if you require authentication of all invoices by Solicitors then their costs would need to be paid in advance and in all likelihood they would advocate immediate forfeiture proceedings as the fastest method to secure the arrears which would add considerably to costs "* [60]

The tribunal's decision

54. The tribunal determines that the amount payable in relation to roof repairs/gutters is £0

Reasons for the tribunal's decision

55. The Respondents have not provided a breakdown or information about the charges they claim, and have actively attempted to dissuade the applications from requesting such information, by suggesting that they may incur charges of around £300 per hour to collate such information. The Respondent's own evidence in correspondence [58-60] suggests that no itemisation has or will be provided to the applicants: "*As managing agents there are no objections to agreeing a budget for all of the above. You should be aware that the roof repair work alone done on Lansdowne Lane in the past calendar is four figures worth. Itemisation of all expenditure is not a problem however if you require authentication of all invoices by Solicitors then their costs would need to be paid in advance and in all likelihood they would advocate immediate forfeiture proceedings as the fastest method to secure the arrears which would add considerably to costs*" [60]

56. This statement appeared to the tribunal to corroborate the applicants' oral evidence that no breakdown of sums claimed for service charges had been provided.

57. Mr Williams was given the opportunity to test the applicants case, but was ineffective in doing so, merely stating that the roof had been repaired.

58. The tribunal found on balance that no works under this heading had been carried out. If the Tribunal is wrong on this point, no evidence of works having been carried out has been provided, and therefore the demand is not validly made, and has been served in breach of s20B of the 1985 Act. For those reasons £0 is payable.

Tree pruning – service charge years 2016/17, 2017/18 and 2018/19. Amount claimed Flat 1 £245.00; Flat 2 £188.90

59. The applicants produced photographs of the overgrown tree [119-121]. Their submission is that no receipts or itemised demands have been provided for any work carried under this heading. In oral evidence they confirmed that all the neighbours were concerned about this overgrown tree from which sap drops and causes issues. This is also referred to in Greg Blanchfield's witness statement at paragraph 10 [128]. Mr Blanchfield lives next door to the building.

60. Mr Williams in his challenge to these assertions, referred the tribunal to paragraph 5 of the witness statement of Henry Doran [134]. Mr Williams sought to rely on that paragraph as evidence that the managing agents had carried out tree pruning. That paragraph states "*The tree, which the Applicant, Amy Price, arranged to be cut back in February 2020, was hugely overgrown at least from 2016 until that date and has been an issue for many of the neighbours on the street. There was an attempt by two men who seemed to have been instructed by the managing agent to cut back the tree but they arrived with no proper equipment and attempted to cut the tree using hedge clippers with one man on another's shoulder which was completely ludicrous and ineffective*" [134]. The contents of the paragraph were pointed out to Mr Williams. His response was that the paragraph showed works had been carried out, that the overhanging branches had been pruned, and he queried that if they hadn't done the work, how would they have charged for that work.

61. Miss Price confirmed that the tree had been pruned, but not by the managing agents. This had been organised by the applicants.

The tribunal's decision

62. The tribunal determines that the amount payable in respect of tree pruning is £0 .

Reasons for the tribunal's decision

63. Whilst the lease permits recharging expenditure by the respondents, works must be of a reasonable standard. The Tribunal found on balance that the attempt to prune the tree as described in Mr Doran's witness statement was credible, and was not of a reasonable standard in breach of s.19(b) of the 1985 Act. In any event, the demands made are in breach of s.20B of the 1985 Act, having been issued to the applicants in October 2020, and are not payable.

Paving slab jet wash for service charge periods 2016/2017, 2017/2018. And 2018/2019. Amount claimed Flat 1 £245.00; Flat 2 £188.90

64. The applicants dispute that jet washing has ever been carried out at the property by the respondents. The witness statement of Henry Doran at paragraph 6 [1345] describes "*a very feeble attempt by a couple of men who had a brush and a bucket of water in January 2017*". He goes on to describe works having been arranged by the applicants themselves in August 2020 when their neighbour, Greg, power hosed the paving stones and the partition wall. [134].

65. Mr Williams stated that washing had to be carried out due to the sap falling from the tree, and the question he asked the applicants was "*is it believable that it would only have been once"*.

The tribunal's decision

66. The tribunal determines that the amount payable in respect of paving slab jet wash is £0.

Reasons for the tribunal's decision

67. The evidence in the appeal bundle, in particular the witness statement of Henry Doran, and reported in oral evidence by the applicants was credible and painted a picture for the tribunal about the manner in which the respondents fail to manage their duties under the terms of the lease.

68. This is an item that could in principle have been recharged to the applicants to recompense the lessors under the terms of the lease, had they carried out their duties to a reasonable standard. The Tribunal found that they did not. In any event, the demands made are in breach of s.20B of the 1985 Act, having been issued to the applicants in October 2020, and are not payable.

Accountant fee for service charge periods 2016/17, 2017/18 and 2018/19. Amount claimed Flat 1 £450.00; Flat 2 £337.80

69. Although the respondents demand accountants' fees, the applicants assert that no accounts have every been provided by the respondents. The respondents' reply to the applicants request for breakdowns of service charges is set out above under the heading for insurance.

The tribunal's decision

70. The tribunal determines that the amount payable in respect of Accountant fees is £0 .

Reasons for the tribunal's decision

71. Whilst in principle the applicants would be liable to recompense the respondents for any fees paid in relation to accounts for the building, the tribunal found on balance that no accounts have ever been provided to the applicants. Therefore, it was impossible to assess whether or not this has been reasonably incurred, and whether the service is of a reasonable standard, the applicants must have an opportunity to have sight of the accounts.

72. On balance, the tribunal found no accounts had been produced. In any event, these sums have not been demanded in time, and are not payable by virtue of s.20B of the 1985 act.

Management fee for service charge periods 2016/17, 2017/18 and 2018/19. Amount claimed Flat 1 £915.00; Flat 2 £757.00

73. The applicants' submission is that they have not received any service by the managing agents at all. They say, and refer the tribunal to documentary evidence in the form of emails from them and responses (as detailed under the heading of insurance above), that the managing agents refuse to provide any information or documentation to them, and threaten forfeiture with hefty legal costs against the applicant.

The tribunal's decision

74. The tribunal determines that the amount payable in respect of management fees is £0 .

Reasons for the tribunal's decision

75. The lease entitles the respondents to charge a management fee. However, there is no evidence that there has been any management of the property, other than late demands. The applicants have requested information and documentation from the management company. The responses have been obstructive, unhelpful, and unprofessional. The tribunal were satisfied that any management of this building that may have taken place was minimal and unprofessional.

76. In any event, the demands made are in breach of s.20B of the 1985 Act, having been sent to the applicants for the first time in October 2020 [65-70] and are not payable.

Fire safety risk inspection for the service charge periods 2016/17, 2017/18 and 2018/19. Amount claimed Flat 1 £150.00; Flat 2 £132.60

77. In oral evidence the applicants challenged whether any such inspection had ever taken place. Miss O'Donnell asserted there had not been such an inspection since 2016. No one had ever attended to carry out an

inspection, and the applicants challenge whether it is even payable under the terms of the lease. The Tribunal were referred to a photograph in the appeal bundle [124]. The photograph indicates that there is a cradle but no smoke or heat detection, which the applicants say have never been installed. They also challenge whether the door to flat 2 is fire rated door and say no evidence to that effect has ever been produced. Both applicants have installed smoke alarms within their flats to counter the lack of fire safety in the communal hallway.

78. Mr Williams in his question to the applicants alleged that the applicants had removed the smoke alarm from the communal hallway. This was denied by the applicants. Mr Williams went on to ask why they were storing shoes in the communal hallway. He was asked by the tribunal whether he was a fire safety expert. His response was that only to the extent that he knew what the rules were. He stated that shoes should not be stored in the communal hallway, which he had noted in the photograph referred to. When asked when he had inspected, he could not provide a date, referring only to the difficulties there had been during COVID lockdown.

The tribunal's decision

79. The tribunal determines that the amount payable in respect of fire safety risk inspection is £0.

Reasons for the tribunal's decision

80. There is no evidence that a fire safety risk inspection has been carried out in the building since the applicants purchased their flats. The charge made in the demands [65-70] for £50 for each leaseholder per annum, without any inspection report, or invoice from those allegedly carrying out the inspection is not consistent with good property management.

81. On balance the Tribunal found it unlikely that these inspections had been carried out. In any event, the demands made are in breach of s.20B of the 1985 Act, having been issued to the applicants in October 2020, and are not payable.

Manhole / drains clearance for service charge periods 2016/17, 2017/18 and 2018/2019. Amount claimed Flat 1 £500.00; Flat 2 £350.41

82. The applicants assert that no works had been carried out as claimed in the demands. No invoices or breakdown had been provided.

83. Mr Williams asked the applicants whether they thought manholes were on the first floor of a building.

The tribunal's decision

84. The tribunal determines that the amount payable in respect of manhole / drains clearance is £0 .

Reasons for the tribunal's decision

85. The Tribunal had permitted Mr Williams to test the applicants' case, but he was unable to do so. He sought to introduce new evidence at every opportunity despite having been warned on every occasion that he was not permitted to do so because of the respondents' complete disregard for the rules, and non-compliance with directions. His question to the applicants as to whether they thought the manholes were on the upper floors of the building were unhelpful and obstructive. He was given every opportunity during the hearing to test the evidence constructively, but he failed to do so.

86. The Tribunal found the applicants bundle helpful, and their oral evidence was consistent with their case. In contrast, Mr Williams was inconsistent and obstructive. Whilst he had attended the case management hearing, where he suggested that Mr Richardson was part of the management company, at the end of the hearing, he suddenly stated that Mr Richardson was neither employed by the freeholder or the management company and was just "helping out".

87. The Tribunal on balance found that no works had been carried out on the manholes or drains, otherwise some evidence of invoices could have been produced by the respondents. Instead, they chose to be evasive and threaten the applicants with forfeiture.

88. In any event, the respondents are in breach of s.20B of the 1985 Act, and cannot now claim service charges which were not demanded in time.

Service charge period 2019/2020

89. The applicants ask the tribunal to strike out any claim for this period made by the respondents as it is not itemised or demanded. No demand for this period has been received by the applicants to date.

90. On 12.10.2020 the applicants wrote to the respondents by email [78] asking that they provide a written demand for service charges from 29.09.2019 to 23.11.2020 (24.11.2020 being the date of takeover of the management of the property by 57 Lansdowne Lane RTM Company). No response has been received by the applicants.

91. The respondent submits they still have time to do so.

The tribunal's decision

92. The tribunal could not make a determination for this service charge period as no demand either estimated or final has been made.

93. The respondent's position is that they still have time to make the demand for this period.

The relevant terms of the lease

94. Clause 3: *"The Lessee HEREBY COVENANTS with the Lessor and with and for the benefit of the lessees and occupiers from time to time during the currency of the term hereby granted of the other Units that the Lessee will at all times hereafter during the said term pay to the Lessor without any deduction by way of further an additional rent an additional sum towards the expenses and outgoings incurred by the Lessor in the repair maintenance and renewal and insurance of the Building in accordance with Clauses 4.2 4.6.1 4..2 4.6.4 4.7 and 4.8 hereof and the other heads of expenditure as the same are set out in the Fifth Schedule hereto and the fees of the Lessors managing agents in respect thereof including any Value Added Tax such further and additional rent (hereinafter called "the service charge") being a reasonable proportion of the sum of:*

(a) *The total cost the Lessor incurs in complying the its obligations in clauses 4.2 4.6.1 4.6.2 4.6.4 4.7 and 4.8 and;*

(b) *The total cost of the items listed in the Fifth Schedule*

95. *"THE FIFTH SCHEDULE" Lessor's expenses and outgoing s and other heads of expenditure of which the Lessee is to pay a proportionate part by way of service charge*

1. *The expense of lighting maintaining repairing redecorating and renewing amending cleaning repointing and painting .....*
2. *The cost of insurance and keeping insured...*
3. *The cost of maintaining and decorating the exterior of the Building*
4. *The cost of maintaining the grounds of the building in a neat and tidy condition including the maintenance and repair of all fences boundary walls and hedges*

5. ...
6. ...
7. ....
8. *The fees of the Lessor's Managing Agents for the collection of the rents of the Units in the Building and for the supervision of the provision of services and repairs to the Building and generally for the management thereof including any VAT Payable thereon*
9. ..."

Application under s.20C and refund of fees

96. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

97. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: D. Brandler **Date:** 22nd February 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).