FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/LSC/2023/0253**
Property	**:**	**Flats 8, 15, 18, 21 and 27, 75 Worple Road, London, SW19 4LS**
Applicant	**:**	**75 Worple Road RTM Company Ltd**
Representative	**:**	**Andrew Brooke (Counsel)** **instructed by Gregsons Solicitors**
Respondent	**:**	**The Trustees of the Charity known as the Friends of Achiezer Arad Charity Trust**
Representative	**:**	**Piers Harrison (Counsel)** **Instructed by Scott Cohen Solicitors**
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 Robert Latham** **Sarah Phillips MRICS** **Alan Ring**
Date and Venue of Hearing	**:**	**16 January 2024 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 February 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal finds that the following service charges for 2021/22 have been reasonably incurred: (i) Schedule 1 service charge costs: £33,026 and (ii) Schedule 2 reserve fund: £10,000. The Respondent's share is 3.989% in respect of each of their five flats.

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(2) The Tribunal finds that the following service charges for 2022/23 have been reasonably incurred: Schedule 1 service charge costs: £42,467. The Respondent's share is 3.989% in respect of each of their five flats.

(3) The Tribunal is not satisfied that lawful demands have been made for these sums. However, these sums will become payable upon lawful demands being made.

(4) The Tribunal finds that the following interim service charge for 2023/24 is reasonable and is payable: (i) Schedule 1 service charge costs: £888.12 and (ii) Schedule 2 reserve fund: £1,495.87. These sums are payable for each of the Respondent's five flats for the first half of the year. The said sum was payable monthly in advance on the first day of each month. A similar sum was payable over the final six months of the year.

(5) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(6) The Tribunal does make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that the Applicant shall not be entitled to recover the cost of these proceedings against the Respondent as an administration charge.

(7) The tribunal determines that the Respondent shall pay the Applicant £200 within 28 days of this decision, in respect of the reimbursement of 67% of the tribunal fees paid by the Applicant.

The Application

1. In this decision, the Tribunal refers to the Application Bundle (326 pages), references to which will be prefixed by "p.__" and the Supplementary Bundle (26 pages) prefixed by "S.__".

2. By an application dated 5 May 2023, the Applicant RTM Company seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent for the service charge years 2021/22, 2022/23 and 2023/24. Service charge accounts are now available for 2021/22 and 2022/23. The Tribunal therefore determines the final sums payable for these years. The application for 2023/24 rather relates to an interim service charge.

3. This application relates to five flats at 75 Worple Road, London, SW19 4LS ("the Building"). The Building is a three storey purpose built block of 27 residential flats. The Trustees of the Charity known as the Friends of Achiezer Arad Charity Trust, the Respondent, is the leaseholder for Flats 8, 15, 18, 21 and 27 which are held pursuant to leases dated 6

December 2017. The flats have been managed on their behalf by Avon Estates (London) Ltd ("Avon Estates")

4. This Building has an unfortunate history. The freehold was held by the Respondent, which also retained possession of the five flats. A majority of the tenants were dissatisfied with the manner in which the Building was being managed. On 23 April 2009, the Applicant RTM was incorporated. It subsequently acquired the Right to Manage ("RTM") pursuant to the provisions of Part 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The Respondent opposed this application. The Applicant has appointed Sneller Property Consultants ("Snellers") to manage the Building.

5. Not content with having acquired the RTM, a majority of the tenants proceeded to enfranchise the freehold of the Building pursuant to provisions of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. The five flats retained by the Respondent would have been treated as non-qualifying tenants for the purposes of the Act. The Respondent opposed the enfranchisement. On 6 December 2017, RJJC RTE Limited, the enfranchisement Company, acquired the freehold interest for £230k. Pursuant to the enfranchisement, the Respondent was granted the current leases of their six flats for terms of 999 years from 6 December 2017.

6. It would seem from the schedule to the lease (at p.261) that there were 16 participating tenants to whom RJJC RTE Limited has granted 999 years leases. Nine other leaseholders did not participate in the enfranchise and occupy their flats pursuant to their original leases. Some have secured 90 years statutory extensions to their leases. This Tribunal is only concerned with the leases held by the Respondent and the service charges payable by the Respondent pursuant to the terms of their leases.

7. In April 2021, the Respondent stopped paying their service charges. Given that these 5 flats contribute some 20% of the total service charges, this has had a considerable impact on the ability of the Applicant to maintain the Building. The Applicant states that on 2 October 2023, the Respondent owed over £91,000.

8. The background to this dispute is a proposal to replace the roof at a cost of some £247k. Whilst this sum was included in the budget for 2022/23, it was not spent. The Applicant contends that it was unable to finance the works without funds from the Respondent.

9. The Respondent's response to this application has been largely procedural, namely to contend that the sums have not been demanded in strict accordance with the terms of the lease. On 20 October 2023, they changed their solicitor. On 16 August 2023, Coleman Coyle Limited had drafted their Scott Schedule and Statement of Case. On 1 November

2023, Scott Cohen drafted the Respondent's Reply which raised a number of new issues.

10. On 17 November 2023, the Respondent issued proceedings in the County Court seeking damages for disrepair in respect of the water penetration which has affected Flat 15. On 12 December 2023, the Respondent applied to stay these proceedings pending determination of the claim in the County Court. On 5 January 2024, a Procedural Judge refused this application.

11. In *Bluesorm Ltd v Portvale Holding Ltd* [2004] EWCA Civ 289; [2004] HLR 49, the Court of Appeal held that a tenant's failure to pay service charges may be a substantial cause of a landlord's non-performance of its repairing covenants. Where a landlord is dependent upon a tenant to pay a significant proportion of the service charge, it may be unreasonable for the landlord to undertake any major works until put in funds. Further, were a tenant's breach of his obligations to pay service charges due under the lease foreseeably causes the landlord a loss, this may be recoverable from the tenant. However, these are matters for the County Court.

The Hearing

12. Mr Andrew Brooke, Counsel instructed by Gregsons Solicitors, appeared for the Applicant. He was accompanied by Mr Erroll Walker who is a director of the Applicant Company. Mr Walker had made a witness statement, dated 12 December 2023.

13. Mr Piers Harrison, Counsel instructed by Scott Cohen Solicitors, appeared for the Respondent. He was accompanied by Mr Israel Moskovitz, a trustee of the Respondent Charity. Mr Moskovitz had made a witness statement, dated 2 November 2023.

14. Both Counsel provided Skeleton Arguments. Mr Brooke provided a Bundle of six authorities (103 pages). Mr Harrison also provided a Bundle of six authorities (123 pages). He also supplied a copy of *Saunders v Shenfield Limited* [2023] UKUT 208 (LC) at the hearing. There was no overlap between the authorities provided by Counsel.

15. At the commencement of the hearing, Mr Harrison submitted that the Tribunal should not have regard to the witness statement from Mr Walker as it had not been served in accordance with the Directions which had been given by the Tribunal. The statement referred to a number of documents which had not been disclosed relating to the roofing works. The Respondent could not respond to this without sight of the documents. He referred the Tribunal to *Mitchell v News Group Newspapers* [2014] 1 WLR 795 and *BPP Holdings Ltd v Revenue and Customs Commrs* [2017] UKSC 55, [23-26]). These authorities have

confirmed the importance of compliance with such Directions, if cases are to be determined fairly and in a proportionate manner in accordance with the Overriding Objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules ("the Tribunal Rules").

16. It was apparent to the Tribunal that neither had the Respondent complied with the Directions. Mr Brooke pointed out that the Reply was not a brief supplementary reply in response to the issues raised by the Applicant; it had rather raised additional unparticularised grounds of objection. Further, Mr Moskovitz's statement had been served late. The Tribunal was also concerned that the Bundles did not include a number of critical documents, namely (i) the relevant service charge demands; (ii) a full set of the statutory consultation documents; and (iii) the tender documentation relating to the roof repairs.

17. The Tribunal therefore gave the parties two options:

(i) to proceed with the hearing, but restricting both parties to relying only on the material which had been served in accordance with the Directions; or

(ii) to adjourn the hearing and issue further Directions so that all relevant material could be disclosed and both parties could be afforded with an opportunity to consider this.

Both Counsel elected on the former course. Mr Harrison took no objection to the Tribunal relying on the Supplementary Bundle which the Applicant had served on 12 January 2024 and which included the service charge accounts for 2022/23.

18. The hearing therefore proceeded on the basis of the submissions made by Counsel and the documents filed by the parties in accordance with the Directions. No evidence was heard and no regard has been had to the witness statements.

<u>**The Issues in Dispute**</u>

19. By its application dated 5 May 2023, the Applicant seeks a determination as to the amount of service charges payable by the Respondent for the service charge years 2021/22 and 2022/23. On 1 August 2023, the Applicant was given permission to challenge the advance service charge for the first half of 2023/24.

20. The Tribunal has given Directions on 19 July, 1 August and 12 September 2023. The Applicant was content for the application to be determined on the papers. On 13 September 2023, the Respondent applied for the application to be determined at an oral hearing.

21. By 2 August 2023, the Applicant was directed to send to the Respondent copies of all relevant service charge accounts and estimates for the years in dispute, together with all demands for payment and details of any payments made. On 1 August, the Applicant served the documents at p.38-64 of the Bundle. This included (i) the budgets for 2020/21, 2021/22, 2022/23 and 2023/24; (ii) the service charge accounts for 2020/21 and 2021/22 and (iii) two invoices dated 6 February and 8 March 2023. The Applicant did not provide all the relevant service charge demands. The service charge accounts for 2022/23 were not available at this time.

22. By 16 August 2023, the Respondent was directed to send to the Applicant a Scott Schedule of issues in dispute, their Statement of Case, any documents on which they sought to rely (including any alternative quotes) and any witness statements. In its Scott Schedule (at p.214-217), the Respondent challenged a limited number of items:

(i) 2021/22: £5,210 for roof repairs (£207.82 per flat). The Respondent's case is that the stage had been reached when patch repairs were no longer sufficient and the roof should have been renewed. The Applicant responds that it could not renew the roof until the lessees put it in funds.

(ii) 2022/23: The challenge is to the budget. The service charge accounts are now available and the tribunal therefore focuses on the actual expenditure, rather than an academic challenge.

> (a) Legal and Professional Fees: £2,500 (£99.72 per flat). The Respondent contends that the sum demanded was excessive; rather £1,390 should have been included. The actual expenditure was £1,776 (£70.84 per flat).
>
> (b) Roof Repairs: £247,117 (£9,857.49). This was an estimate. The Respondent contends that this estimate was excessive. Their contribution for their five flats would have been £49,287. The Applicant was unable to commence the works until it was put in funds. In the event, only £3,275 was spent on patch repairs. The other lessees paid £188,684. The Applicant transferred this to the reserve fund (see S.11).

(iii) 2023/24: The Respondent does not challenge any of the service charge items included in the budget. The Scott Schedule merely states that the Respondent "repeat paragraphs 9 and 10 of their Statement of Case".

23. The Directions had provided that (if not already included in the Scott Schedule), the Statement of Case should set out the relevant service charge provisions in the lease and any legal submissions in support of the service charges claimed, including argument, if liability to pay is at

issue. The Respondent's Statement of Case is at p.65-67. Paragraphs 1 to 7 set out the history to the dispute. At paragraphs 8 to 10, the Respondent sets out its case on liability. At [8], the Respondent notes that the Applicant had only produced two invoices, dated 6 February and 8 March 2023. Two specific averments are then made:

(i) Paragraph 9 reads: "It is denied that the Respondents are liable for the sums claimed in the service charge demands". The Tribunal takes this as an averment that the service charges have not been demanded in accordance with the terms of the lease.

(ii) Paragraph 10 is an averment that the demands did not specify the name and address of the landlord as required by section 47 of the Landlord and Tenant Act 1987. The complaint seemed to be that the demands gave the particulars for the RTM Company, rather than the landlord. However, as the Applicant noted in its response that paragraph 12 of Schedule 7 of the Commonhold and Leasehold Reform Act 2002 provides that reference to the RTM complies with these statutory requirements. Mr Harrison accepted this.

24. The Respondent did not serve any witness statements or alternative quotes. They did serve a mass of documents (at p.72-211). There are a large number of emails relating to the disrepair to the roof.

25. By 11 October 2023, the Applicant was directed to send the Respondent its response to the Scott Schedule, a Statement of Case, any documents on which they sought to rely and any witness statements. On 2 October, the Applicant added its response to the Scott Schedule and provided a short Statement of Case (at p.212-213). It did not serve any additional documents or any witness statement.

26. The Directions permitted the Respondent to send a "brief supplementary reply" by 1 November 2023. On 20 October, having changed solicitor, the Respondent served their Reply (at p.218-221). This is not the brief supplementary reply contemplated by the Directions. It rather seeks to raise new issues, including a defence of equitable set-off (see *Continental Property Venture Inc v White [2007] L&TR 4*). This is now a matter for the County Court. The Tribunal is only willing to have regard to the Reply to the extent that it responds to points raised by the Applicant in their response to the Scott Schedule and Statement of Case.

27. In his Skeleton Argument, Mr Harrison has sought to raise an argument based on section 20B of the Act. This is fact sensitive. It is not an issue which had been raised in the pleadings and the Tribunal is not willing to entertain it.

28. The Tribunal has identified the following issues to be determined:

(i) Are the service charges demanded for 2021/22 and 2022/23, and the interim service charges demanded for 2023/24 payable pursuant to the terms of the lease and reasonable;

(ii) Has the Applicant made lawful demands for these payments?

The Law

29. Section 18 of the Landlord and Tenant Act 1985 ("the Act") defines the concepts of "service charge" and "relevant costs":

> "(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 estimate costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with matters for which the service charge is payable."

30. By section 30, a "landlord" includes "any person who has a right to enforce payment of a service charge".

31. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
>
> > (a) only to the extent that they are reasonably incurred, and
> >
> > (b) where they are incurred on the provision of services 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."

32. The Supreme Court has recently reviewed the approach that should be adopted by tribunals in considering the reasonableness of service charges in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual regime is likely to leave important decisions to the discretion of the landlord. A landlord (or RTM Company in this case) is contractually obliged to act reasonably. This is subject to this Tribunal's jurisdiction under the 1985 Act to determine whether the landlord acted reasonably (see [33]). A relevant factor in this case, is that a majority of the lessees have felt it necessary to establish the Applicant RTM Company to ensure that the Building is effectively managed.

33. The Tribunal highlights the following passage from the judgment of Martin Rodger KC, the Deputy President, in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC); [2023] HLR 8;

> "28. Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions."

The Leases

34. The Respondent holds its five flats pursuant to leases dated 6 December 2017, which were granted pursuant to the statutory enfranchisement. The lease for Flat 15 is at p.268-291. The lease is for a term of 999 years The lessee's service charge contribution is 3.989%. We are told that all the leases are in similar terms with the same service charge contribution.

35. By clause 3(2)(b), the lessee covenants to pay the Service Charge in accordance with clause 7. Clause 7(1) defines:

(a) the "Account Year" as the year ending on 31 March;

(b) "the Service Provision" as "the sum computed in accordance with sub-clauses (4), (5) and (6); and

(c) "Service Charge" as "the Specified Proportion of the Service Provision".

36. By Clause 7(2), the lessee covenants "to pay the Service Charge during the term by equal payments in advance on the first day of each month". Such sums are to be held on trust to be used for the purposes identified in clause 7(5). Any interest shall be added to the reserve.

37. Clause 7(3) provides that the Service Provision in respect of any Account Year should be computed before the beginning of the Account Year in accordance with clause 7(4).

38. Clause 7(4) provides that the Service Provision should consist of a sum comprising:

(a) Expenditure estimated to be incurred in the Account Year;

(b) An appropriate amount as a reserve for or towards such of the matters in clause 7(5) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term or at intervals of more than one year the said amount to be computed in such manner as to ensure as far as is reasonably foreseeable that the Service Provision shall not fluctuate unduly from year to years; but

(c) Reduced by any unexpended reserve already made pursuant to paragraph (b) in respect of any such expenditure.

39. Clause 7(5) provides for the purposes upon which the service charge may be spent. The clause is wide ranging and covers "all reasonable expenditure" incurred by the landlord in respect of the management, repair, and maintenance of the Property. Specific reference is made to "costs of and incidental to the performance" of the Landlord's covenants in clauses 5(2)-(4) as well as solicitors' and other agents' costs. It is accepted that the items in dispute are payable as service charges. The dispute rather relates to the reasonableness of the sums demanded.

40. Clause 7(6) provides that as soon as practicable after the end of each Account Year, the Landlord shall determine and certify the amount by which the estimate referred to in clause 7(4)(a) shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy of the certificate and the Leaseholder

shall be allowed or as the case may be shall pay upon receipt of the certificate the Specified Proportion of the excess or the deficiency.

41. The Landlord's covenants are specified in Clause 5. Clause 5(3) provides:

"that (subject to payment of the service charges and except to such extent as the Leaseholder or the tenant or occupier of any other of the Flats shall be liable in respect thereof respectively under the terms of this Lease or of any other lease) the Landlord shall maintain repair redecorate and renew" inter alia, the roof, foundations, main structure of the Property.

The Operation of the Service Charge Account

42. In advance of each service charge year, Snellers have prepared a service charge budget from which the interim service charge contribution is computed. This has been split between two schedules: (i) Schedule 1 for the basic service charge expenditure and (ii) Schedule 2 for any reserve fund contribution.

43. The lease provides for the landlord to demand an interim service charge which will be payable in advance on 1 April and the first of each subsequent month of the financial year. Snellers have rather demanded an advance six month service charge payable on 1 April and 1 October. The demand for the first advance service charge for 2023/24 is at p.54-55. On 8 March 2023, Snellers demanded a Schedule 1 service charge of £888.12 and a Schedule 2 reserve fund contribution of £1,495.56. The first six monthly payment was payable on 1 April 2023. This was accompanied by a separate letter with the budget (at p.62-64).

44. In support of his argument that the Applicant's failure to demand monthly payments rendered the interim service demand invalid, Mr Harison relied upon a number of authorities and legal texts including *Leonora Investment Co v Mott Macdonald Ltd* [2008] EWCA Civ 857; *Kensquare Ltd v Boakye* [2022] H.L.R. 26 (at [33]); *Southwark LBC v Woelke* [2013] UKUT 349 (LC) at [40]; *H. Stain Ltd v Richmond* [2021] UKUT 66 (LC) (at [12], [14] [25]); Service Charges and Management 5th Ed. at 2-34; Woodfall 7.178; and Aldridge Leasehold Law at 4.124.

45. The Tribunal does not analyse these authorities in detail for the reason stated by Tuckey LJ in *Leonora Investment* at [24]:

> "The skeleton arguments referred to a number of cases in which the courts have had to consider whether terms in a lease are conditions precedent to obligations to pay, substantive procedural provisions which have to be followed to the letter before a liability to pay is triggered, or mere mechanics which do not have to be insisted upon regardless of the circumstances. I

> have not found these cases particularly helpful for the simple reason that we are only concerned with an issue of construction, the rules of which are not in doubt. The leases in this case must be construed in accordance with their own terms."

46. However, we do find the following statement of principle taken from the judgment of Martin Rodger QC, the Deputy President, in *Southwark LBC v Woelke* at [40] to be helpful:

> "Where a contract lays down a process giving one party the right to trigger a liability of the other party, such as the payment of a sum of money in response to a demand, it is a question of construction of the contract whether the steps in the process are essential to the creation of the liability, or whether the process may unilaterally be varied or departed from without invalidating the demand. Where issues such as those in this appeal arise, it is necessary to identify the minimum requirements laid down by the lease before the obligation to pay the service charge will be created, and then to consider whether the circumstances of the case satisfy those minimum requirements. In considering each of those matters, it is not appropriate to adopt a technical or legalistic approach. The service charge provisions of leases are practical arrangements which should be interpreted and applied in a businesslike way. On the other hand, precisely because the payment of service charges is a matter of routine, a businesslike approach to construction is unlikely to permit very much deviation from the relatively simple and readily understandable structure of annual accounting, regular payments on account and final balancing calculations with which residential leaseholders are very familiar. When entering into long residential leases, the parties must be taken to intend that the service charge will be operated in accordance with the terms they have agreed. Leaseholders should be able to work out for themselves whether a sum is due to be paid by reading the lease and comparing the process it describes with the information provided in support of the demand by the landlord, without the involvement of lawyers or other advisers."

47. We are satisfied that the failure to specify that the advance service charge is payable monthly does not invalidate the demand. The most important provision in the lease was that the lessee should know the basis upon which the interim charge has been assessed. The demand was also made before the start of the service charge year. Any lessee who was familiar with their lease would have known that they could pay by monthly instalments. Had a lessee offered to pay monthly, and the landlord had refused to accept such payments, different consideration might arise. However, that did not occur in this case. On the basis of Mr Harrison's argument, no advance service charge would have been payable for 2023/24, and the Applicant would have been left with no funds to

manage the block. This is not an outcome that the parties would have contemplated.

48. Mr Harrison raised a further point. In 2022, there was a substantial excess; the Applicant decided to transfer this to the reserve fund. Mr Harrison argued that the Applicant should rather have returned any excess to the paying lessee or credited it to their service charge account in accordance with Clause 7(6) of the lease. This action has no relevance to the Respondent and their five leases. They have made no payments since April 2021.

49. The Applicant would hold any excess paid by any lessee which had been transferred to the reserve fund on trust for the lessee. It would be obliged to return any excess, had this been demanded by a lessee. However, in practice, it is probable that the lessee would be content for the surplus to be placed in the reserve fund so that the essential repairs to the roof could be put in hand. The lessee is more likely to be concerned at the probable increase in the cost of the roof works, caused by the Respondent's failure to pay their contribution.

The Background

50. The documents disclosed by the Respondent with their Statement of Case (at p.72-211) confirm that there have been complaints about the state of the roof dating back to June 2019 (at p.80). Snellers arranged for repairs to put in hand. Some repairs were delayed because of problems of access. Further difficulties were presented by the Covid-19 lockdown. However, it is apparent that patch repairs were executed, but these were insufficient. The roof had reached the end of its natural life.

51. In November 2020, the Applicant obtained a report from Michael Ryan-Morrows MRICS (at p.130-135). He considered three options: (i) to continue with reactive repairs; (ii) planned preventative works or (iii) replacement of the entire roof. He recommended this final course at a cost of c.£80k to £100k. On 25 March 2021 (at p.155-156), Snellers wrote to the lessees outlining these three options.

52. In March 2021, the Respondent obtained their own report from Simon Levy FRICS. However, the Respondent did not include this with the documents served with their Statement of Case.

53. In about March 2021 (see p.39), Snellers sent a service charge demand to the Respondent seeking a six month interim charge for 2021/22 of (i) Schedule 1 service charges of £790.43; and (ii) Schedule 2 Reserve Fund contribution of £199.41. At this stage, the Respondent stopped making any service charge payments. A demand was subsequently made for the second instalment which was payable on 1 October 2021.

54. In about March 2022 (see p.39), Snellers sent a service charge demand to the Respondent seeking a six month interim charge for 2022/23 of Schedule 1 service charges costs of £5,639.25. The most substantial item in the budget was the estimate cost of works to the roof in the sum of £247,117. A demand was subsequently made for the second instalment which was payable on 1 October 2022. The Respondent did not make any payment. We were told that Snellers had served the relevant statutory consultation documents and had obtained a number of estimates for the roofing works. However, the Applicant not include these with their Statement of Case.

55. On 20 September 2022, the Respondent obtained a second report from Simon Levy (at p.136-140). He was satisfied that the roof coverings for the Building were well beyond their expected life span. The roof coverings required replacement with a new membrane finish to provide a satisfactory standard of weathering.

56. On 8 March 2023 (at p.54-55), Snellers sent a service charge demand to the Respondent seeking a six month interim service charge for 2023/24 of (i) Schedule 1 service charges of £888.12 and (ii) Schedule 2 Reserve Fund contribution of £1,495.56. The invoice stated that these sums became payable on 1 April 2023. A separate letter of the same date (at p.62-64) explained how the budget had been computed. The Respondent did not make any payment.

57. On 5 May 2023, the Applicant issued their application to this Tribunal.

58. On 29 June 2023 (at p.157-160), Snellers sent a further Stage 1 Notice of Intention. Snellers explained that the Applicant had been ready to replace the roof in May 2022. However, they had been unable to proceed with the works due to lack of funds. Costs had increased. The Applicant had now changed the specification and were seeking quotes from other providers. It was proposed to use any funds in the reserve fund to plug any shortfall until the arrears could be recovered. The Applicant considered that they had sufficient funds to proceed with the works. Strictly, any reserve fund contributions are held on trust for the paying lessee, and should not be used to plug the gap created by lessees who refuse to pay. However, the Applicant is a RTM Company owned by the lessees, which may elect to take a more pragmatic approach given that the works are urgently required. At the date of the hearing, the works to replace the roof had not started.

Issue 1: Service Charge for 2021/22

1.1 The Reasonableness of the Service Charge

59. The Budget for 2021/22 is at p.60, and the accounts for the year at p.58. The budgeted Schedule 1 expenditure for the year was £49,639; whilst

the actual expenditure was £42,024. The budget also included a £10,000 reserve fund contribution.

60. The Respondent challenged one item of expenditure, namely £5,210 on roof repairs. £13,000 had been included in the budget for these works. The Respondent contends that the roof had been in disrepair since 2019. The repairs which have been executed have been "reactive, patchy, to a poor standard and have not remedied the disrepair". The Respondent contends that had more substantial repairs been executed timeously, these patch repairs would not have been necessary.

61. The Applicant responds that it had been unable to carry out more significant funds, because the lessees had not put them in funds. The Respondent had been withholding the payment of any service charges in respect of their five flats since 1 April 2021.

62. The Applicant has provided the three invoices for the works to the roof: (i) 19 May 2021 for works above Flat 24: £1,890 (S.3); (ii) 2 August 2021 for works above Flat 27: £1,680 (S.4); and (iii) 22 November 2021 for works above Flat 11: £1,640 (S.5). We are satisfied that these works were required and could not await the replacement of the roof. We are therefore satisfied that they are payable pursuant to the terms of the lease and are reasonable.

1.2 Has a Lawful Demand been Made for Payment

63. The Applicant has not provided a copy of the relevant demands for either the interim service charges or the final demand. It is apparent from the invoice at p.39 that Snellers sent two six-monthly demands for service charges for 2021/22 of (i) Schedule 1 service charges of £790.43; and (ii) Schedule 2 Reserve Fund contribution of £199.41 payable on 1 April 2021 and 1 October 2021. Such demands would have been valid even though the interim service charges were strictly payable monthly (see [47] above).

64. However, the relevant issue is now the final service charge which would be due when the service charge accounts became available. The final sums due are (i) Schedule 1 costs: £33,026 and (ii) Schedule 2 costs: £10,000. The Respondent's share is 3.989% in respect of each of their five flats.

65. The Tribunal has not been provided with a copy of this demand. We cannot be satisfied that it was demanded with the appropriate certificate in accordance with Clause 7(6) of the lease (see [40] above). However, these sums will become payable, upon a lawful demand being made.

Issue 2: Service Charge for 2022/23

2.1 The Reasonableness of the Service Charge

66. The Budget for 2022/23 is at p.61, and the accounts for the year at S.6-16. The budgeted expenditure for the year was £282,800; whilst the actual expenditure was £42,467. The reason for this substantial difference was that £247,117 had been included in the budget for repairs to the roof. In the event, the major works to the roof were deferred because the Applicant lacked the funds to finance them.

67. As the accounts are now available (at S.6-16), the substantive issue is the actual expenditure for which the Respondent is liable. Flat 15 is liable for 3.989% of £42,467, namely £1,694.

68. The first item which the Respondent challenged in the budget is £2,500 for legal and professional fees. The actual expenditure was £1,776. The Respondent contends that the budgeted figure was too high. The figure should rather have been £1,380, the actual expenditure in the previous year. The Applicant responds that given the history of arrears, it had been necessary to budget for the legal advice and action that would be necessary. We accept this argument. We are satisfied that these sums are payable pursuant to the terms of the lease and both the budgeted and the actual expenditure is reasonable.

69. The second item challenged is the sum of £247,117 included in the budget for the replacement of the roof. The Respondent contends that the budgeted figure should rather have been £120,000 (inc VAT) which had been a figure mentioned in an email of 25 March 2021 (at p.155). Mr Harrison, relying on the Upper Tribunal decision in *Wigmore Homes (UK) Ltd v Spembly Works Residents Association Ltd* (2018) UKUT 252 (LC); [2019] HLR 6 (at [52]), argues that it is for the Applicant to justify their figure.

70. The Applicant responds that the 2021 figure was an estimate. This estimate did not include insulation required by the Building Regulations, the cost of which is estimated at £70,000 + VAT. Further, the cost of the works had increased due to the Respondent's failure to pay their service charges.

71. The Tribunal is satisfied that the Applicant needed to ensure that they had sufficient funds to ensure that they could finance the roof works. This has been a time of considerable inflation in the building trade. Any landlord must ensure that it has sufficient funds, before embarking upon such major works. We have regard to the RICS Service Charge Management Code (at [7.3]) which advises that it is prudent to slightly over-estimate the total level of funds required. If there is any excess, this will be held on trust and credited to the service charge payer. We are

surprised at the limited evidence that the Applicant has adduced to justify their figure. However, on balance, we are satisfied that the Applicant acted reasonably in including this sum in the budget. This finding is largely academic given that the final service charge accounts are now available.

72. The service charge accounts for 2022/23 are at S.6-16. The total expenditure was £42,467, in respect of which Flat 15 is liable for 3.989%, namely £1,694. Of the sums disputed in the Scott Schedule, the expenditure on legal and professional fees was £1,776 and only £3,275 was expended on repairs to roof. We are satisfied that these sums are reasonable and payable pursuant to the terms of the lease.

2.2 Has a Lawful Demand been Made for Payment

73. The Applicant has not provided a copy of the relevant demands for either the interim service charges or the final demand. It is apparent from the invoice at p.39 that Snellers sent two six-monthly demands for service charges for 2022/23 of Schedule 1 service charges of £5,639.25 payable on 1 April 20221 and 1 October 2023. Such demands would have been valid even though the interim service charges were strictly payable monthly.

74. However, the relevant issue is now the final service charge which fell due when the service charge accounts became available. The Tribunal has not been provided with a copy of this demand for £1,694. We cannot be satisfied that it was demanded in accordance with Clause 7(6) of the lease. However, this sum will become payable, upon a lawful demand being made.

Issue 3: Interim Service Charge for 2023/24

3.1 The Reasonableness of the Service Charge

75. The Budget for 2023/24 is at p.62-64. It is made up of two elements: (i) Schedule 1 – service charges: £44,538 (in the budget the total is not computed); and (ii) Schedule 2 – reserve fund: £75,000. Flat 15's 3.989% contribution is (i) Schedule 1: £1,776.62 and (ii) Schedule 2: £2,991.25.

76. The Respondent does not dispute any of these service charge items. The Tribunal is satisfied that these sums are payable pursuant to the terms of the lease and are reasonable.

3.2 Has a Lawful Demand been Made for Payment

77. On 8 March 2023 (at p.54-55), Snellers sent the Respondent a service charge demand seeking an interim service charge for the period 1 April

to 30 September 2023, demanding (i) Schedule 1: £888.12 and (ii) Schedule 2: £1,495.56. The invoice stated that these sums became payable on 1 April 2023. The demand was accompanied by the requisite summary of rights and obligations. A separate letter of the same date (at p.62-64) explained how the budget had been computed. This demand was valid even though the interim service charges were strictly payable monthly (see [47] above).

Refund of Fees and Associated Orders

78. At the end of the hearing, the Applicant made an application for a refund of the fees of £300 that it has paid in respect of the application. The Applicant has been largely successful. However, its preparation of the case has been far from satisfactory. Snellers have not demanded service charges in accordance with the terms of the lease. We therefore make an order that the Respondent refunds the Applicant 67% of the fees that they have paid, namely £200.

79. The Respondent has applied for orders under (i) section 20C of the 1985 Act so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge and (ii) under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that the Applicant shall not be entitled to recover the cost of these proceedings against the Respondent as an administration charge.

80. Having regard to our findings above, we are satisfied that the Applicant should be entitled to pass on the cost of these proceedings through the service charge, but should not be able to pass them on to the Respondent as an administration charge. We are not satisfied that lawful demands have been made for the final service charges for 2021/22 and 2022/23. In the circumstances, we do not make an order under section 20C, but we do make an order under paragraph 5A.

The Next Steps

81. This application has been brought by the Applicant. The Applicant has not complied with the Directions given by the tribunal. Neither has it had sufficient regard to the terms of the lease when making demands for the payment of service charges. Any reserve fund contribution (Schedule 2) must be demanded and treated as such. The lease makes separate provision in respect of any excess arising from the general service charge account (Schedule 1).

82. A new service charge year commences on 1 April 2024. The Applicant must devise a budget to ensure that it has sufficient funds to carry out the works to the roof which are urgently required. It should explain the basis upon which it has estimated the cost of the works to the roof. Any

service charges must be demanded strictly in accordance with the terms of the relevant leases.

83. The Respondent must recognise that the urgent works to the roof can only be executed if the Applicant is put in funds to execute these works. It is for the Applicant to make a reasonable estimate of the likely cost of the works. The pending action in the County Court should not be used as an excuse for not paying any service charges which are now demanded in accordance with the terms of the lease.

Judge Robert Latham
13 February 2024

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).