FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2023/0268**
Property	**:**	**34 Beechcroft Close, Valley Road, Streatham, London, SW16 2EW**
Applicant	**:**	**Mr. Fausto Selmi**
Representative	**:**	**In person**
Respondent	**:**	**Beechcroft Close Management Limited**
Representative	**:**	**Ms. Grodsinkzi - Counsel**
Type of application	**:**	**Payability and reasonableness of Service Charges (Section 27A Landlord and Tenant Act 1985) and administration charges (paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002)**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. D. Jagger MRICS**
Date and Venue of hearing	**:**	**4 March 2024 at 10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**13 March 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal finds as follow:

(a) The Applicant's proportion of the Maintenance Expenses (pursuant to para. 1 of the Seventh Schedule of the Lease) is 2.29%;
(b) The Applicant's share of the roof works referred to in Item 2 of the Scott Schedule is limited to £250;
(c) The Applicant's share of the roof works referred to in Item 3 of the Scott Schedule is limited to £250;
(d) The Applicant's share of the costs pursuant to the management agreement with PMMS referred to in Item 4 of the Scott Schedule is limited to £100;
(e) The charges for insurance premiums (£22,000 in total in the demand dated 4 April 2022 and a charge of £39,061 in total in the demand dated 31 March 2023) referred to in Items 5-6 of the Scott Schedule are lawful and reasonable;
(f) There was no charge made to the Applicant in respect of the works set out at Item 7 of the Scott Schedule and the Tribunal therefore makes no further finding in relation to this;
(g) The charge of £4,150 (total) for the repairs to bricks and gate referred to at Item 8 of the Scott Schedule are lawful and reasonable;
(h) The charge of £2,500 (total) for the repairs due to storm damage referred to at Item 9 of the Scott Schedule are lawful and reasonable;
(i) The charge of £102 (total) for the works to the gutters of Block 1-20 (A) referred to at Item 10 of the Scott Schedule are lawful and reasonable;
(j) The charge of £4,548 (total) relating to apparent water ingress referred to at Item 11 of the Scott Schedule are lawful and reasonable;
(k) The charge of £720 (total) for the repairs to bricks by the main gate referred to at Item 12 of the Scott Schedule are lawful and reasonable;
(l) The charges for gardening and cleaning referred to at Item 13 of the Scott Schedule are lawful and reasonable;
(m) The administration charges referred to at Item 14 of the Scott Schedule are limited to £168;
(n) The charges for internal redecoration to hallways referred to at Item 15 of the Scott Schedule are lawful and reasonable;
(o) No order is made in respect of item 16 of the Scott Schedule.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.

(3) The Tribunal makes an order under paragraph 5A of Schedule 11 to the 2002 Act;

(4) The Tribunal makes an order as against the Respondent for a refund of 50% of the tribunal fees paid by the Applicant, i.e. in the sum of £150.

References are to page numbers in the bundles provided for the hearing.

The Application – R52, A1

1. The Applicant is the leaseholder of 34 Beechcroft Close, Valley Road, Streatham, London SW16 2EW. The application was brought in respect of 1-50 Beechcroft Close, but the Tribunal raised at the hearing that it appeared that the subject property was 34 Beechcroft Close ("the Property"). This was agreed by the parties.

2. The Property is a flat in a Development which was built in about 1965 and is a purpose built block of flats comprising four buildings: Block A-B is a twin block totalling 12 two-bedroom flats and 8 studio flats (Block A has flats 1-10 and Block B has flats 11-20); Block C-D is a two block comprising 16 two-bedroom flats (Block C has flats 21-28 and Block D has flats 29-36); Block E is a single block comprising 8 two-bedroom flats (flats 37-44); Block F is a single block which comprises 6 one bedroom flats (45-50): p.40. The Property is situated in Block D.

3. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether administration charges are payable and reasonable. He also seeks an order pursuant to Section 20C of the Landlord and Tenant Act 1985 and an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

4. The application states that service charges for the following years are challenged: 2018-2024 inclusive.

5. On 8 September 2023 (R67, A16) and amended on 27 September 2023 (A24), the Tribunal gave directions. The amendment substituted the Management Company as the Respondent, rather than the Landlord.

6. The order also identified the issues, as being:
(a) Whether service charges for the years 2018 to 2024 (inclusive) were reasonable and payable;
(b) the sum disputed was £6,929.83 including £490 administration charges;
(c) whether service charges have been apportioned and charged correctly;

(d) whether reserve fund demands have been made correctly and in the right amount;
(e) whether the consultation requirements in respect of the major roof works were carried out;
(f) whether insurance premiums were reasonable;
(g) whether items for maintenance charges were reasonable and payable;
(h) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 of the 2002 Act should be made;
(i) whether an order for reimbursement of application/hearing fees should be made.

7. Directions were given to prepare the application for hearing.

8. On 16 January 2024 (R75, A33) there was a Case Management Hearing and further directions were given.

Documentation

9. The Respondent, pursuant to the directions given on 16 January 2024 provided a bundle of documents comprising a total of 926 pages (references to which will be prefixed by "A__"). On 29 February 2024, the Applicant made an application to the Tribunal to use his bundle, which comprised 589 pages (references to which will be prefixed by "R__"). The Tribunal dealt with this at the start of the hearing and indicated its intention to primarily use the Respondent's bundle (but informed the Applicant that if there was a document in his bundle which he wished to rely upon, which was not in the Respondent's bundle, the Tribunal would consider that document at the time). A short time into the hearing, however, it transpired that the Respondent was working primarily from the Applicant's bundle, so the hearing proceeded with everyone working primarily from the Applicant's bundle, although some reference was made to the Respondent's bundle.

The Hearing

10. The Applicant attended the hearing in person. Mr. Barralcough, a Director of the Respondent company attended the hearing and the Respondent was represented by Ms. Grodzkinski, Counsel. The Tribunal raised with the parties the number of issues raised and the time allowed for the hearing, and both parties stated that they were of the view that all matters could be dealt with in the time allowed (and allowing some time for the Tribunal to discuss their decision). The Tribunal suggested that the matter proceed by going through the Scott Schedule, and hearing from both parties on each item, and the parties were agreeable to this. The position of each party is dealt with below, under the appropriate items.

The Lease – R1, A36

11. The Lease is dated 26 October 2005 and is between Morribrook Investments Limited (Lessor), the Respondent (the Management Company) and the Applicant (Lessee). It defines the following:

1.3 - "the Development": the land and buildings described in the First Schedule hereto being known as 1-50 Beechcroft Close, Valley Road Streatham and comprising Blocks A-F

1.4 - "the Plan": the plans annexed, Plan 1 and Plan 2 showing the demised premises and parking space

1.5 - "the Flats": the 50 self-contained flats at the Development and any additional self-contained flats which may be created at the Development during the terms of this Lease

1.6 – "the demised premises": the property hereby demised as described in the Third Schedule hereto

1.7 – "the Maintained Property": those parts of the Development which are more particularly described in the Second Schedule hereto and the maintenance of which is the responsibility of the Management Company

1.8 – "the Maintenance Expenses": the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company at all times during the term hereby granted in carrying out the obligations specified in the Sixth Schedule

1.9 – "the Lessee's Proportion": the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule hereto

12. The Second Schedule describes the Maintained Property as: "the entrance halls common halls passages landings staircases bin stores and other parts of the Flats which are used in common by the owners or occupiers of any two or more of the Flats together with the glass in the windows of such common parts" and the "structural parts of the Development including the roofs gutters rainwater pipes foundations floors all walls bounding individual flats therein and all external parts of the Development and all Service Installations not used solely for the purpose of one flat…

13. The Sixth Schedule states the following in respect of the Maintenance Expenses: "Moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company at all times during the term hereby granted in respect of the following:

1. Repairing rebuilding repointing or otherwise treating as necessary and keeping the Maintained Property and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof

2. Painting with two coats at least of the best quality paint so often as may (in the reasonable opinion of the Management Company) be necessary and in a proper and workmanlike manner all the wood metal stone and other work of the Maintained Property and the external surfaces of all exterior doors of the Flats which usually are or ought to be painted as to the outside and inside portions thereof at least once in every four years

3. Providing and paying such workmen as may be necessary in connection with the up-keep of the Maintained Property

4. If required to do by the Lessor pursuant to clause 1 of the Ninth Schedule insuring the Development in a sum equal to the full cost of reinstatement against loss or damage…

5. Insuring any risks for which the Management Company may be an employer of persons working on the Development or as the owner of the Development or an part thereof as it shall think fit

6. Cleaning as necessary the external faces of all windows in the Maintained Property and as may be necessary keeping cleaned the common entrance halls passages landings and staircases lifts and all other common parts of the Flats

…

13. Generally managing and administering the Development and protecting the amenities of the Development and for that purpose if so required employing a firm of managing agents and (in so far as the Management Company think fit) enforcing or attempting to enforce the observance of the covenants on the part of any lessee of any of the Flats

14. Employing a qualified accountant for the purpose of auditing the accounts in respect of the Maintenance Expenses…

…

17. Administering the Management Company itself and arranging for all necessary meetings thereof to be held and complying with all relevant statues and regulations and orders thereunder and (if the Management Company thinks fit) employing a suitable person or firm to deal with these matters

14. The Seventh Schedule states the following in respect of the Lessee's proportion of the Maintenance Expenses

1. The Lessee's Proportion means a fair proportion to be determined by the Management Company of the Maintenance Expenses attributable to the matters mentioned in the Sixth Schedule hereto as certified by the accountant for the Management Company PROVIDED THAT the Management Company may vary the amount of the Lessee's Proportion if it would be fair and reasonable to do so in the event that the Development at any time comprises more or less than 50 self-contained flats of if the floor area of any flat is increased or in the event that any of the Blocks cease to be run by the Management Company PROVIDED ALWAYS as follows:

1.1 The certificate of the accountant for the time being of the Management Company as to the total amount of the Maintenance Expenses for the period to which the account relates shall (subject as hereinafter mentioned) save in case of manifest error be binding on the Management Company and the Lessee

1.2 If the Lessee shall at any time during the said term object to any item of the Maintenance Expenses as being unreasonable or to the insurances mentioned in the Sixth Schedule hereto being insufficient then the matter in dispute shall be determined (on the application of either party) by a person to be appointed for the purpose by the President for the time being of the Royal Institution of Chartered Surveyors whose decision shall bind both parties Provided Always that any objection by the Lessee under this sub-paragraph shall not affect the obligation of the Lessee to pay to the Management Company the Lessee's proportion or share of the Maintenance Expenses in accordance with paragraph 3 of this Schedule and after the decision of any person appointed by the said President of the Royal Institution of Chartered Surveyors as aforesaid any overpayment by the Lessee shall be either credited against future payments due from the Lessee to the Management Company under this Schedule or (if the Lessee so requests) repaid by the Management Company to the Lessee

2. An account of the Maintenance Expenses (distinguishing between actual expenditure and reserve for future expenditure) for the period ending 24th Mach during each year of the said term shall be prepared and the Management Company shall within six months of the date of each account serve on the Lessee a copy thereof and of the accountant's certificate.

3. The Lessee shall pay to the Management Company of the Lessee's Proportion or share of the Maintenance Expenses in manner following that is to say:

3.1 In advance on the 29th September and on the 25th March in every year throughout the said term one half of the Lessee's Proportion or share of the amount estimate by the Management Company or its managing agents or accountants as the Maintenance Expenses for the year ending on the next 24th March the first payment to be apportioned (if necessary) from the date hereof

3.2 Within 21 days after the service by the Management Company on the Lessee of the copy of the account and certificate referred to in paragraph 2 of this Schedule for the period in question the Lessee shall pay to the Management Company or be entitled to receive from the Management Company the balance by which the Lessee's Proportion or share respectively exceeds or falls short of the total sums paid by the Lessee to the Management Company pursuant to paragraph 3.1 of this Schedule during the said period

15. Clause 3 states that the Lessee covenants with the Lessor to perform the obligations set out in Parts One, Two and Three of the Eighth Schedule and with the Management Company to perform the obligations set out in Parts Two and Three of the Eighth Schedule.

16. The Eighth Schedule sets out the covenants on the part of the Lessee enforceable by the Lessor, and which include:

"1. To pay the said rent hereinbefore reserved on the days and in the manner herein provided.

2. To pay to the Lessor as the Lessee may reasonably determine to be a fair and reasonable proportion the sums expended by the Lessor in insuring the Development in accordance with the covenant contained in clause 1 of the Ninth Schedule such payment to be made within 14 days of demand

...

4. To pay Costs

4.1 To pay all costs charges and expenses (including legal costs and fees payable to a Surveyor) incurred by the Lessor in or in contemplation of any proceedings or the serve of any notice under Sections 146 and 147 of The Law of Property Act 1925 and any reference to the Leasehold Valuation Tribunal relating to any matters under this Lease including the costs charges and expenses aforesaid of and incidental to the inspection of the demised premises the drawing up of schedules of dilapidations and notices and any inspection to ascertain whether any notice has been complied with and such costs charges and expenses shall be paid whether or not forfeiture for any breach shall be avoided otherwise than by relief granted by the court

4.2 To pay on a full indemnity basis any legal costs Surveyors Architects or Managing Agent's fees or expenses properly incurred by the Lessor in connection with:

(a) any application or licence or consent or otherwise made by or on behalf of the Lessee whether or not the same is granted by the Lessor or

(b) with any breach by the Lessee of any of his/her/its covenants on his/her/its behalf contained in the lease

4.3 To pay on a full indemnity basis such sum as may be reasonable in the circumstances to the Lessor or their managing agent as the case may be in respect of each occasion when it shall be necessary for the Lessor to communicate to the Lessee any breach of covenant incurred by the Lessee whether in respect of non-payment of rent or the failure of the Lessee to perform and observe any of its covenants and obligations herein contained PROVIDED THAT for the avoidance of doubt the fee payable under this sub-clause shall be not less than:

4.3.1 FORTY POUNDS (£40) plus Value Added tax thereon (if applicable) for the first TWENTY-FIVE YEARS (25) of the said term…

17. It also sets out the covenants enforceable by the Lessor and the Management Company which include:

4. To repair and keep the demised premises (but excluding such parts of the demised premises as are included in the Maintained Property) and every part thereof and all landlord's fixtures and fittings therein and all additions thereto in good and substantial repair order and condition at all times during the said term including the renewal and replacement forthwith of all worn or damaged parts…

…

6. As often as may be necessary and at least once in every seventh year and in the year preceding the termination of the said term to paint with two coats of the best quality paint and in a proper and workmanlike manner all the internal wood metal stone and other work of the demised premises which usually are or ought to be painted…

7. To clean the interior surfaces of all windows of the said flat

18. Clause 4 states that the Lessor covenants with the Lessee to perform the obligations set out in the Ninth Schedule. Clause 5 states that the Management Company covenants to perform the obligations set out in the Tenth Schedule.

19. The Ninth Schedule provided (among other things):

1. To insure the Development in a sum equal to the full costs of reinstatement against loss or damage by fire lightning explosion impact involving any vehicle train animal aerial aircraft or other aerial devices… bursting and over flowing pipes tanks… subsidence heave landslip and such other risks as the Lessor shall decide…

PROVIDED THAT the Lessor may at any time during the term of this Lease require the Management Company to provide the insurance cover referred to in clause 4 of the Sixth Schedule by giving not less than 28 days written notice to the Management Company to that effect on the expiry of such notice the obligations on the part of the Lessor contained in this clause shall cease to have effect

20. The Tenth Schedule provides, among other things:

1. To carry out the works provide the services and facilities and otherwise and do the acts and things set out in the Sixth Schedule hereto Provided:

....

1.2 Nothing in this covenant contained shall prejudice the Management Company's right to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Management Company or the Maintained Property by the negligence or other wrongful act or default o such person

...

5 To hold all service charges collected from the lessees in an income bearing deposit account in trust for the lessees of the Flats and such money shall be used solely to enable the Management Company to carry out the works and provide the service and facilities and otherwise do the acts and things set out in the Sixth Schedule hereto

The Law

Service charges

21. Section 18 of the Landlord and Tenant Act 1985 provides:

"(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 service, 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 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.

22. Section 19 of the 1985 Act provides:

"(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.

(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"

23. Section 27A provides:

"(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable

(2) 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

24. In *Waaler v Hounslow LBC* [2017] EWCA Civ 45 the Court of Appeal said that "reasonableness" has to be determined by reference to an objective standard, not the lower standard of rationality.

25. The proper approach to assessing reasonableness is set out in *Plough investments Ltd v Manchester City Council* [1989] 1 EGLR 244. Three points emerge from the judgement:

(i) As a general rule, where there is more than one way of executing repairs, the choice of the method of repair rests with the party under the obligation to repair;

(ii) Provided the works of repair are reasonable, a tenant under an obligation to reimburse the cost to the landlord cannot insist upon cheaper or more limited remedial works or a minimum standard of repair;

(iii) A test as to whether works carried out by a landlord and reimbursed by a tenant are reasonable is whether the landlord would have chosen that method of repair if he had to bear the cost himself."

26. In *Nogueira v Westminster LBC* [2014] UKUT 327 (LC) it was said that where the Tribunal is satisfied that there are significant defects in the standard of works, it would be almost certainly wrong in principle for it to make no limitation on service charges under s.19(1)(b).

Administration charges

27. Paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides as follows-

(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.

28. Paragraph 2 of Schedule 11 to the Act provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

29. Paragraph 5 of Schedule 11 to the Act provides as follows-

(1) An application may be made…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) …

(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) …

S.20 Landlord and Tenant Act 1986

30. The s.20 consultation requirements apply to qualifying works and qualifying long term agreements. The provisions apply where a landlord intends after 31 October 2023 either to enter into a qualifying long term agreement or to carry out qualifying works.

31. The basic principle of recoverability under section 20 is that the consultation requirements must be complied with and if they are not complied with or if compliance has not been dispensed with by the Tribunal, the amount of the relevant costs incurred on carrying out the works or under the agreement which may be recovered through the service charge is limited to the "appropriate amount".

32. The application of the provisions is regulated by the *Service Charges (Consultation Requirements)(England) Regulations 2003 – SI 2003 No.1987.*

"The appropriate amount" is –

- in respect of a qualifying long term agreement, an amount which results in the relevant contribution of any tenant in respect of any accounting period exceeding £100 or
- in respect of qualifying works, an amount which results in the relevant contribution of any tenant exceeding £250.

33. The "relevant contribution" is the amount that the tenant may be required under the terms of the lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

34. Section 20ZA(2) provides the following definitions:

- "Qualifying works" are "works on a building or other premises".

- "Qualifying long term agreement" is an agreement entered into by or on behalf of the landlord or a superior landlord for a term of more than twelve months, subject to any exceptions prescribed by the Secretary of State. There are a number of exceptions set out in para. 3 of the Regulations.

35. In brief, the requirements for qualifying long-term agreements not requiring public notice is as follows:

- Notice of intention to enter into agreement to be given to each tenant and any recognised tenants' association, describing, in general terms, the relevant matters or specifying a place and hours at which a description may be inspected free of charge (which arrangements must be reasonable)
- state the reasons why the agreement or works are necessary
- invite written observations and give address to which they may be sent, state period for delivery (which is 30 days from date of notice) and date when that period ends
- invite nomination of a person from whom the landlord should try to obtain an estimate
- Landlord must have regard to any observations made and must try to obtain an estimate from nominated persons (or some of them)
- Landlord must then prepare at least two proposals for provision of the goods or services or works, at least one from a person wholly unconnected with him and including any estimate received from a nominated person

- each proposal must state for each party to the proposed agreement the party's name and address and any connection with the landlord ("connection" is defined in regulation 5(6)) and must give estimate of total cost or rate of charges.
- if the relevant matters include the proposed appointment of a managing agent, the landlord must state whether the agent is a member of a professional body or trade association or subscribes to any code of practice
- written notice of the proposals to be given to each tenant and recognised tenants' association, giving details of arrangements for inspection and inviting observations (as above) and landlord must have regard to any observations made.

36. In brief, the requirements for qualifying works not requiring public notice are as follows:

- Notice of intention to enter into agreement to be given to each tenant and any recognised tenants' association, describing, in general terms, the relevant matters or specifying a place and hours at which a description may be inspected free of charge (which arrangements must be reasonable)
- state the reasons why the agreement or works are necessary
- invite written observations and give address to which they may be sent, state period for delivery (which is 30 days from date of notice) and date when that period ends
- invite nomination of a person from whom the landlord should try to obtain an estimate
- Landlord must have regard to any observations made and must try to obtain an estimate from nominated persons (or some of them)
- Landlord must then prepare at least two proposals for provision of the goods or services or works, at least one from a person wholly unconnected with him and including any estimate received from a nominated person
- each proposal must state for each party to the proposed agreement the party's name and address and any connection with the landlord ("connection" is defined in regulation 5(6)) and must give estimate of total cost or rate of charges.
- landlord must supply to each tenant and recognised tenants' association a statement giving details of at least two estimates, at least one from a wholly unconnected person and including any estimate received from a nominated person, and provide a summary of observations received and his response to them
- landlord must give notice to each tenant and recognised tenants' association specifying time and place where all the estimates can be inspected and invite observations as above and must have regard to any observations made

- on entering into a contract for the carrying out of the qualifying works, the landlord must give notice to the tenants and any recognised tenants' association as above.

Service Charges – R531, A57

37. Under the terms of the lease, service charges are paid in advance on 29 September and 25 March every year, with a balancing payment to be made within 21 days of service of a copy of the account and certificate referred to in paragraph 2 of the Seventh Schedule. The Tribunal requested copies of all Service Charges demands as the only copies in the bundle were those dated 4 April 2022 (R225) and 31 March 2023 (R235).

38. The Respondent provided some documents during the hearing, including:

(a) Demand for payment dated 2 September 2022 for service charges of £645.31, plus £573.50 for the reserve fund, for the period of 25 September 2022-24 March 2023;

(b) Demand for payment dated 14 October 2021 for service charges of £589.35, plus £172.06 for the reserve fund, for the period of 25 March 2023-24 September 2023;

(c) Demand for payment dated 31 March 2023 for service charges of £1,106.27, plus £573.50 for the reserve fund, for the period of 25 September 2021-24 March 2022.

39. During the course of the hearing, the Applicant also provided a number of documents:

(a) service charge demand dated 4 March 2014 for £556.01 (plus £33.34 for parking space charge) for the period 25 March 2014-28 September 2014;

(b) service charge demand dated 12 September 2014 for £556.01 (plus £33.34 for parking space charge) for the period 29 September 2014-24 March 2015;

(c) service charge demand dated 10 September 2015 for £556.01 (plus £33.34 for parking space charge) for the period 29 September 2015-24 March 2016;

(d) service charge demand dated 29 February 2016 for £556.01 (plus £33.34 for parking space charge) for the period 25 March 2016-28 September 2016;

(e) service charge demand dated 26 August 2016 for £556.01 (plus £33.34 for parking space charge) for the period 29 September 2016-24 March 2017;

(f) service charge demand dated 6 March 2017 for £556.01 (plus £33.34 for parking charge) for the period 25 March 2017-28 September 2017;

(g) service charge demand dated 24 August 2017 for £556.01 (plus £33.34 for parking charge) for the period 29 September 2017-24 March 2018;

(h) service charge demand dated 6 March 2018 for £556.01 (plus £33.34 for parking charge) for the period 25 March 2018-28 September 2018;

(i) service charge demand dated 22 March 2019 for £556.01, plus £573.50 for "s.20 Supplementary Charge – Roof Fund" (plus £33.34 for parking charge) for the period 25 March 2019-28 September 2019;

(j) service charge demand dated 29 August 2019 for £556.01, plus £573.50 for "s.20 Supplementary Charge – Roof Fund" (plus £33.34 for parking charge) for the period 29 September 2019-24 March 2020;

(k) service charge demand dated 11 February 2020 for £556.01, plus £573.50 for "s.20 Supplementary Charge – Roof Fund" (plus £33.34 for parking charge) for the period 25 March 2020-28 September 2020;;

(l) service charge demand dated 20 August 2020 for £556.01, plus £573.50 for "s.20 Supplementary Charge – Roof Fund" (plus £33.34 for parking charge) for the period 29 September 2020-24 March 2021;

(m) service charge demand dated 16 March 2021 for £556.01, plus £573.50 for "s.20 Supplementary Charge – Roof Fund" (plus £33.34 for parking charge) for the period 25 March 2021-28 September 2021;

(n) service charge demand dated 24 August 2021 for £573.50, plus £473.50 for "s20 Supplementary Charge – Roof Fund" (plus £33.34 for parking space charge) for the period 29 September 2018-24 March 2019;

(o) service charge demand dated 4 April 2022 for £645.31 as well as £573.50 for the reserve fund, for the period 25 March 2022 to 24 September 2022;

(p) service charge demand dated 8 September 2023 for £1,106.27 plus £172.06 for the reserve fund, for the period 25 September 2023-24 March 2024;

(q) service charge demand dated 14 December 2023 for £244.88 being a deficit from the year end accounts 2022-2023.

40. None of these demands were itemised, in that the Tribunal could not see what items were being charged for as part of the service charges (save the reference to s20 Supplementary Charge" for the "Roof Fund").

41. There was also: an email dated 14 December 2023 referring to an increase of £14,000 for the insurance premium, due to "claims losses reported at the property and a revaluation of the insurance rebuild cost"; emails dated 21 April 2023 and 7 July 2023 from the Applicant; service charge reminders dated 17 August 2022 and 1 June 2023; payment receipt for a payment on 12 September 2022; and a notice of action letter dated 1 September 2022.

Apportionment of Service Charges – Item 1 on Scott Schedule

42. Applicant: The Applicant's share of the total service charges was 2.287% (A450) until in or about 2014. He referred to the questions answered by solicitors in about 2005 (R47) that it was "likely that No. 34 will pay a little more" than 1/50th as it is a two-bedroom flat", and he asserted that at least one other two-bedroom flat was being charged a different percentage.

43. Respondent: The Respondent relied on para 1 of Seventh Schedule to the Lease and the apportionment table (R514) which it said showed that the Property was apportioned at 2.29418% (and had been since 2014) and that the variation (which was an increase of 0.00718%) was in line with the terms of the Lease and there was no reasonable argument that the variation was unfair or unreasonable.

44. The Tribunal did not have any evidence as to either the square footage of the Property or of the other two bedroom flats, which the Applicant asserted were of the same square footage as the Property. The Tribunal did have the table at R514 which did show that the apportionment was the same for all the two-bedroom flats.

45. Tribunal finding: The Tribunal finds that the variation of the apportionment was in accordance with the Lease. The Management Company has power under the Lease to vary the amount of the Lessee's proportion, provided it was fair and reasonable to do so. Given the amount of the increase, the Tribunal finds that the variation was fair and reasonable. The Applicant's share (pursuant to para. 1 of the Seventh Schedule of the Lease) is 2.29%.

Roof works – Item 2 on Scott Schedule

46. The figures contended for by the Applicant were based upon his "estimates". The only service charge demands that were provided to the Tribunal that referred to roof works was that dated 31 March 2023 (R235) and those referred to above which were provided by the Applicant during the course of the hearing and which refer to "s.20 Supplementary Charge – Roof Fund" for £573.50: 24 August 2018; 22 March 2019; 29 August 2019; 11 February 2020;

20 August 2020; 16 March 2021. The figures contended for by the Applicant were based upon his "estimates".

47. Applicant: The Applicant asserted that the s.20 consultation process that was carried out was flawed as, he stated, he had provided an estimate for a company to do works on all blocks at the same time. He accepted that the first part of the consultation was carried out (A504) but he referred to the document containing the statement of estimates (A506), the fact that it was dated 10 July 2020 and it stated that the consultation period would end on 11 July 2020 (i.e. one day later). He also stated that that it was agreed in 2018 to use reserve fund money to refurbish Block 1-20 over the following 2 years, and the other blocks over the following 3 years, but in 2024, only two blocks had had works completed. When asked how it was said that the s.20 consultation process had not been followed, the Applicant said as follows: tenders should come in an envelope and should be opened by the tender handler with the directors, and it was not – instead he got a letter on 29 May 2020 with the tender report (A501) and one of the companies on the list (A501) (Barris Roofing) had not received a letter.

48. Respondent: The Respondent accepted that there had been some delay in the works, but that was due to the pandemic. It was said that the s.20 consultation process had been carried out: A504 was sent prior to any investigation into the cost of the works; there was a tendering process (A501-504) and quotes were obtained. A decision was taken as to which tender/pitch would be accepted, and the one that was chosen was the lowest, which was a reasonable decision. The Respondent was then invoiced for the works (A520-1). The Respondent also submitted that the issue with the date in the Notice of Estimates had not stopped the Applicant raising issues: he had brought them to the attention of the managing agents and had sent emails.

49. Tribunal findings: The Tribunal is satisfied that roof works do fall within the Sixth Schedule, para. 1 of the Lease and are recoverable pursuant to Schedule 7 of the Lease. One of the requirements of The Service Charges (Consultation Requirements) (England) Regulations 2003, Part 2, para. 4 is that the landlord gives notice in writing to each tenant inviting the making of observations in relation to the estimate and specifying the date on which the relevant period ends. Regulation 2 states that the "relevant period" in relation to a notice means the period of 30 days beginning with the date of the notice. The "notice of estimates" (A506) did not give a period of 30 days: it did say that observations had to be received within the consultation period of 30 days from the date of the notice, but it also stated that the consultation period would end on 11 July 2020 (i.e. one day after the notice).

50. The Tribunal finds that the s.20 consultation process was flawed for this reason and the Applicant's share of the costs in relation to these works is limited to £250.

51. Applicant: In relation to reasonableness, the Applicant said that he had sent quotes for the refurbishment of all four blocks (A430-446). He relied upon

the case of *Triplerose Ltd v Ninety Broomfield Road RTM Co Ltd* [2015] EWCA Civ 282 and asserted that the works to Block 1-20 should have been charged only to that Block.

52. Respondent: The Respondent stated that the Applicant's quotes were not estimate, they had not been done with surveyors coming to the block and that the actual cost would vary once properly "priced" quotes were obtained after a surveyor had visited for that purpose. Further, it was said that the cost of works increased as a building ages but that the prices paid were those in the invoice and there was no basis to dispute the legitimacy of the prices (A520-521).

53. Tribunal findings: The Tribunal finds that there is nothing in the *Triplerose* case that means that the works to Block 1-20 should have been charged only to that Block. In that case, the Court of Appeal upheld the view that a right to manage claim can only validly be made in respect of a single set of premises. Further, the Lease provides, para. 1 of the Sixth Schedule, that the covenant is to repair, rebuild, repoint, and keep in good and substantial repair order and condition etc. in relation to the Maintained Property, in relation to the Maintained Property which is defined as set out in the Second Schedule – this is not limited just to Block A.

54. As the Tribunal has limited the Applicant's share of the costs for these works to £250, the Tribunal finds that the costs were reasonable.

<u>Roof works – Item 3 on Scott Schedule</u>

55. The only service charge demands that were provided to the Tribunal that referred to roof works was that dated 31 March 2023 (R235) and those referred to above which were provided by the Applicant during the course of the hearing which referred to "s.20 Supplementary Charge – Roof Fund" for £573.50: 24 August 2018; 22 March 2019; 29 August 2019; 11 February 2020; 20 August 2020; 16 March 2021. The figures contended for by the Applicant were based upon his "estimates".

56. Applicant: The Applicant asserted that no s.20 consultation process was carried out.

57. Respondent: This was accepted by the Respondent. The Respondent sought to make an application for s.20ZA dispensation orally at the hearing.

58. Tribunal findings: The Tribunal informed both parties that it would not permit such an application to be made: despite asserting in the Scott Schedule that it would seek dispensation, it had not made an application and no reason was offered as to this. It had been clear from the time the application was made (certainly by the time the Applicant served his Scott Schedule) that this was a material issue. It would be unfair to require the Applicant to respond to an oral application made during the course of the hearing.

59. The Tribunal finds that the s.20 consultation process was flawed for this reason and the Applicant's share of the costs in relation to these works is limited to £250.

60. Applicant: In relation to reasonableness, the Applicant said that there was a charge for full scaffolding (R525) but that there was no scaffolding but a "tower". The Applicant referred to the photographs (A334-5).

61. Respondent: The Respondent submitted that the pictures appeared to show scaffolding.

62. Tribunal findings: The Tribunal observed that the photographs appeared to show scaffolding.

63. As the Tribunal has limited the Applicant's share of the costs for these works to £250, the Tribunal finds that the costs were reasonable.

Appointment of PMMS as Managing Agent – Item 4 on Scott Schedule

64. The only reference to Management Services in the service charge demands provided to the Tribunal is a charge of £9,670 (total) in the demand dated 4 April 2022 (R225) and a charge of £9,000 (total) in the demand dated 31 March 2023 (R235). It is therefore not clear exactly when and in which amount (beyond dividing those total amounts by 2.29%) the Applicant has been charged for management services.

65. Applicant: The Applicant asserted that s.20 1985 Act applied, and that no s.20 consultation had been carried out.

66. Respondent: The Respondent asserted that the agreement with PMMS (A526) was not a Qualifying Long Term Agreement ("QLTA") and that s.20 therefore did not apply.

67. During the course of the hearing, the Tribunal referred to the cases of *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102 and *Ghosh v Hanover Mansions Ltd* [2019] UKUT 290 (LC).

68. In *Corvan*, the agreement provided that it was for a period of one year which "will continue thereafter". The issue was whether that term was one which could not be terminated until more than 12 months had expired. It was held that the term of the contract was for a period of one year plus an indefinite period which was subject to a right of termination by giving three months' notice. As it mandated continuation beyond the first year, it was a QLTA. For the purpose of assessing whether an agreement is for a term longer than a year, that the agreement involves a commitment to 12 months or more or that

the maximum possible length of the period is greater than a year, it was held (*obiter*) that the deciding factor is the length of the minimum commitment. Whether the agreement is for a term exceeding 12 months is about whether it is an agreement for a term which must exceed 12 months. The requirement that the contract be for a term of more than 12 month cannot be satisfied simply by the contract being indeterminate in length but terminable in the first year.

69. In *Ghosh*, a draft contract was drawn up between the landlord and managing agent on 12 June 2017 with the terms largely agreed, but it was never signed. The managing agent commenced providing services on 12 June 2017 and the landlord did not take steps to prevent this. The first payment for services was made on about 27 June 2017. The First-tier Tribunal held that there was an oral contract but it had not come into being until payment was made, and so it was not for a period of 12 months or more and was not a QLTA. The Upper Tribunal allowed an appeal and found that the contract came into being from the date of performance, it therefore lasted 12 months and was a QLTA.

70. The Respondent acknowledged the cases, but maintained its position.

71. Tribunal findings: The Tribunal finds that the agreement with PMMS was a QLTA and that therefore s.20 did apply. Management services are properly recoverable under the Lease: para. 17, Sixth Schedule and Seventh Schedule. There was no s.20 consultation process and therefore the Applicant's contribution is limited to £100. In relation to reasonableness, as the Tribunal has limited the Applicant's share of the costs for these works to £100, the Tribunal finds that the costs were reasonable.

<u>Insurance premiums – Items 5-6 on Scott Schedule</u>

72. The only reference in the service charge demands provided to the Tribunal is a charge of £22,000 (total) in the demand dated 4 April 2022 (R225) and a charge of £39,061 (total) in the demand dated 31 March 2023 (R235). Again, it is therefore not clear exactly what has been charged to the Applicant (beyond dividing those amounts by 2.29%).

73. Applicant: The Applicant stated that the insurance cost had increased dramatically since 2006 (A251). He stated that he had obtained quotes from insurance providers (A293, A295, A298, A301, A304, A305) for a value of £10m (A279). He also asserted that commission was being paid in respect of the policies although when asked, he could not show that this was the case, but he relied on the fact that in 2013 commission was paid (A257-8).

74. Respondent: The Respondent's position was that the insurance policy was not a QLTA but was an annual insurance policy. It was also said that the quotes did not take account of the significant claims' history. Mr. Barraclough stated

that most of the claims pre-dated his involvement, but there was a leak in a bathroom which caused a collapse in the flat below, and water ingress where an outside wall met plastic coving. It was said that the insurance broker did what s/he could to reduce the cost of the premium (A546) and although it was a high cost, it was reasonable as it was based on the price of the repair of the building and previous claims. It was said that there was no commission and in fact this was the only insurer prepared to provide a quote due to the claims history.

75. Tribunal findings: The Tribunal finds that the insurance policies (A267, A273) are not QLTA's (as they were not for a term of more than 12 months) and s.20 1985 Act therefore does not apply to them.

76. The Tribunal finds that these costs fall within cl. 1.8-1.9, Eighth Schedule, para. 2 and Ninth Schedule, para. 1 of the Lease. They are, therefore, lawful charges under the Lease.

77. The Tribunal does note the significant increase in the cost of the premiums: although the figure given by the Respondent in the Scott Schedule of £56,288 is far higher than those seen in the service charge demands (referred to above). The Applicant said that there was no evidence of the previous claims, but the Tribunal accepts the evidence of Mr. Barraclough and that there is evidence that the broker did negotiate to try to get a better deal on the insurance.

78. Taking account of what it was told of the claims' history, there was insufficient information to show that the quotes obtained by the Applicant were "like for like", as they did not take account of the claims' history. Whilst, as stated above, the only information as to service charges are those set out in the documents at R225 and R235, the Tribunal does, taking all things into account, find that these costs were reasonable.

<u>Hyperoptic installations and brickwork remedy – Item 7 on Scott Schedule</u>

79. Applicant: The Applicant in his schedule states that the amount of these works is not known. The Scott Schedule states that the Applicant seeks an order requiring removal of the installation and making good of the brickwork as well as seeking compensation for nuisance. The Tribunal has no jurisdiction to make such an order (nor to order compensation) as so does not make the orders sought.

80. Respondent: The Respondent states that no charge was ever made to the Applicant. the Tribunal accepts that the Applicant has not been charged for these works and, as there has been no service charge, the Tribunal makes no order in respect of this item.

Brick repairs and gate replacement associated to car park – Item 8 on Scott Schedule

81. Applicant: The Applicant asserts that these works should have been claimed through insurance. He also relied on the *Triplerose* case (above) and submitted that there should be no charge as the car park was solely used by residents of Block 45-50.

82. Respondent: The Respondent's position is that the damage, which was repaired at a cost of £4,150, was caused by an unknown driver and it could not be claimed for through the insurance.

83. Applicant: In response to this, the Applicant referred to the Lease (R33), the Ninth Schedule, which provides that the Lessor covenants to "insure the Development… against loss or damage by… impact involving any vehicle…".

84. Tribunal findings: The Tribunal finds that the charges are recoverable under the terms of the Lease: Sixth Schedule, para. 1, Seventh Schedule. There is an argument, therefore, that this damage ought to have been covered by the insurance. The Respondent's evidence, however, was that it was not so covered and the Tribunal accepts that evidence. It is also the case that insurance policies do have caveats and that even where there is a policy in place that covers damage by a vehicle, this does not mean it covers all damage by any vehicle.

85. The Tribunal finds that there is nothing in the *Triplerose* case that means that there should be no charge as the car park was solely used by residents of Block 45-50. Further, the Lease provides, para. 1 of the Sixth Schedule, that the covenant is to repair, rebuild, repoint, and keep in good and substantial repair order and condition etc. in relation to the Maintained Property, in relation to the Maintained Property which is defined as set out in the Second Schedule.

86. There is no evidence of the service charges actually charged to the Applicant (his figures are estimated) but the Tribunal has information as to the total cost of the work (£4,150). The Tribunal finds that these costs are reasonable.

Repairs due to storm damage to car park – Item 9 on Scott Schedule

87. Applicant: The Applicant asserts that these works should have been claimed through insurance.

88. Respondent: The Respondent's position is that there was a decision not to claim the cost of the works (£2,500) through the insurance, as it would impact

on future premiums. It said that premiums were already being increased, the cost of the works was not "enormous" and to pay the cost, rather than claim through insurance, would save money in the long term.

89. Tribunal findings: The Tribunal finds that the charges are recoverable under the terms of the Lease: Sixth Schedule, para. 1, Seventh Schedule.

90. There is no evidence of the service charges actually charged to the Applicant (his figures are estimated) but the Tribunal has information as to the total cost of the work (£2,500). The Tribunal finds that the Tribunal finds that the costs are reasonable: taking account of the increased cost of the insurance premiums, and that one of the reasons why they had increased was because of the claims history. The Tribunal accepts that it was likely to be more cost effective in the long-term for the repair works to be paid from the service charge, then pursued through insurance, likely leading to higher insurance costs in the future.

Repairs to the gutters of Block 1-20 – Item 10 on Scott Schedule

91. Applicant: The Applicant asserts that these works should have been claimed from contractors as he asserts that there was an issue with their work. He asserted that previous contractors had produced an incorrect rainwater design, that they did not finish the job, there had been a leak and it had been repaired twice by two different companies (in September 2022 and March 2023).

92. Respondent: The Respondent's position is that the gutter was blocked and someone was contracted to clear then, at a cost of £102 (A568) and that there was no other charge.

93. Tribunal findings: The Tribunal finds that the charges are recoverable under the terms of the Lease: Sixth Schedule, para. 1, Seventh Schedule.

94. There is no evidence of the service charges actually charged to the Applicant (his figures are estimated) but in so far as the Tribunal has the total charge for the work of £102 (the gutter cleaning being the only works that was carried out – and not related to any previous works of a contractor), the Tribunal finds that the costs are reasonable.

Brick repairs to Flat 41– Item 11 on Scott Schedule

95. Applicant: The Applicant submitted that the scaffolding went up on 23 February 2022 and was put up on a different side of the building (South-east

corner), there was damage to the South-West corner (the report apparently showing this was not in the bundles but there was damage said to be evident on A379), the pictures showed that it was in the wrong corner and then moved (A377, A381). The scaffolding was not taken down for another 2 months (A385-6) and the pictures showed the damage to the brickwork had not been repaired.

96. Respondent: The Respondent said that it did not know why the scaffolding was up for so long, but that it had not led to increased costs: the invoice for the scaffolding was raised on 28 February 2022 (A571) and no further charge was made when the works were invoiced in May 2022 A569.

97. Tribunal findings: The Tribunal finds that the charges are recoverable under the terms of the Lease: Sixth Schedule, para. 1, Seventh Schedule.

98. There is no evidence of the service charges actually charged to the Applicant (his figures are estimated) but the Tribunal has information as to cost of the scaffolding and of the works: A571 and A569). The Tribunal finds that the Tribunal finds that the costs are reasonable: the Tribunal finds that the scaffolding was in place for about 3 months, but there is no evidence that this increased the cost of the scaffolding.

<u>Repairs to brickwork by main car gate – Item 12 on Scott Schedule</u>

99. Applicant: The Applicant asserts that these works should have been claimed through the insurance of the company whose van caused the damage (Veolia) or through the insurance policy for the blocks.

100. Respondent: The Respondent's position is that it had no evidence that it was a Veolia van which had caused the damage and that there was a decision not to claim the cost of the works (£720) through the insurance, as it would impact on future premiums and that in any event, the cost would have fallen within the excess.

101. The Tribunal finds that the charges are recoverable under the terms of the Lease: Sixth Schedule, para. 1, Seventh Schedule.

102. There is no evidence of the service charges actually charged to the Applicant (his figures are estimated) but the Tribunal has information as to the total cost of the work (£720). The Tribunal finds that the Tribunal finds that the costs are reasonable: the Respondent could not prove that it was Veolia that had caused the damage. Further, in light of the increased cost of the insurance premiums, and that one of the reasons why they had increased was because of the claims history, the Tribunal accepts that it was likely to be more cost effective in the long-term for the repair works to be paid from the service

charge, then pursued through insurance, likely leading to higher insurance costs in the future.

Gardening and cleaning – Item 13 on Scott Schedule

103. Applicant: The Applicant's position was that the contracts were QLTA and there had been no s.20 consultation. He stated that he had provided quotations for gardeners (A420) and said that they appeared not to have been taken into consideration. He also took issue with the standard of service and said that the firms he recommended did weekly gardening and fortnightly cleaning, but the current company did weekly hoovering of stairs and gardening every 3-4 weeks. He said that the current contractors have two teams who did not complement each other, they worked randomly and did not provide extra works. He said that leaseholders had had to take their own rubbish.

104. The Respondent said that the contracts were not QLTA's being monthly contracts (A574, A578) as the agreements could be terminated on one month's notice. It disputed that there was any issue with service. It said that the services provided were set out at A575-6. It was said that the Applicant's quotation (annual rate of £8,800 at A420 and) were similar to the current contractor (£698 per month i.e. £8,376 p.a.).

105. Tribunal findings: The Tribunal finds that the agreements were not for a term which must exceed 12 months; the agreements do not involve a commitment to 12 months or more and the minimum commitment was for one month.

106. The charges are recoverable under the terms of the Lease: Sixth Schedule, para. 6, para. 1, para. 3, para. 13, Seventh Schedule.

107. There is no evidence of the service charges actually charged to the Applicant (his figures are estimated) but in so far as the Tribunal has the total charges under the contract, the Tribunal finds that the costs are reasonable. There is no express requirement to accept the lowest estimate: *Wandsworth LBC v Griffin* [2000] 26 EG 147, LT .

PMMS administration charges – Item 14 on Scott Schedule

108. Applicant: The Applicant relies on the agreement the Respondent has with PMMS (A526) and asserted that the fees charges exceeded those set out in that agreement. He also asserted that no fees should have been charged as the arrears were the subject of dispute.

109. Respondent: The Respondent submitted that just because the Applicant had chosen to challenge the charges that did not render them unreasonable, they were provided for in the management agreement and the managing agent was entitled to recover them in accordance with the Lease. The Respondent said that the management agreement set out what PMMS would charge the Respondent, not what it would charge the Applicant.

110. Tribunal findings: The charges that have been levied are:

(a) £60 – invoiced on 5 July 2023 (R219) – charged for late payment;

(b) £60 - invoiced on 17 January 2022 (R221) – charged for late payment;

(c) £120 – invoiced on 4 March 2022 (R223) – charged for "sending file to PDC for debt collection".

111. The charges set out in para. 13 and 17 of the Sixth Schedule are included in the definition of maintenance expenses and the Eighth Schedule does state that the Lessee will pay any Managing Agent's fees or expenses properly incurred by the Lessor in connection with any breach by the Lessee of any of his/her/its covenants on his/her/its behalf contained in the lease and to pay "such sum as may be reasonable in the circumstances to the Lessor or their managing agent as the case may be in respect of each occasion when it shall be necessary for the Lessor to communicate to the Lessee any breach of covenant incurred by the Lessee whether in respect of non-payment of rent or the failure of the Lessee to perform and observe any of its covenants and obligations herein contained".

112. The Tribunal finds that the charges do fall within the terms of the Lease (management services are properly recoverable under the Lease: para. 17, Sixth Schedule and Seventh Schedule), but it then has to look at their amount.

113. The Applicant is not a party (in his capacity as leaseholder at least to the contract between the Respondent and PMMS, but it does contain the terms on which it is said that PMMS will raises charges to the Respondent's leaseholders. It sets out (A543) the "service for which additional fees may be charged to individual property owners" and the material charges are: "late payment admin fee" of £36 (including VAT) and "admin fee sending docs to debt collecting solicitors" of £96 (including VAT). The Tribunal finds that the charges, therefore, should not exceed £168 (being 2 x late payment admin fee of £36 and 1 x admin fee of £96 sending docs to debt collecting solicitors).

<u>Internal redecoration to hallways – Item 15 on Scott Schedule</u>

114. Applicant: The Applicant asserted that the original quote (A579) does not match the later one (A581) and that the redecoration ought to be done every 4 years. He said that the redecorations had been held up and that the service charge money had been mixed up with the reserve fund money and the RICS guidelines said that they had to be kept separate. In the Scott Schedule he claimed compensation as he stated that he missed a sale of the Property due to the poor decorative order of the communal areas.

115. Respondent: The Respondent said that the redecoration was necessary, was done in accordance with the Lease, the costs were reasonable (A579-84) and that there was no evidence that the delay in the works had increased the cost. It was said that there was no evidence as to loss suffered by the Applicant and in any event, this did not go to the service charges. It was said that there was no evidence that the money was "mixed up".

116. Tribunal findings: Within the Lease, hallways do fall within the definition of the Maintained Property (Second Schedule) and within the Maintenance Expenses set out at the Sixth Schedule (and therefore within the charges at cl. 1.8 and the Seventh Schedule). The charges therefore are lawful under the terms of the Lease. The Applicant did not make any comment on the standard of the works and it appears from his submissions that the works were indeed necessary. There is no evidence of the service charges actually charged to the Applicant (his figures are estimated) but in so far as the invoices for the works were £12,604 in total for the four blocks and various quotations were obtained, the Tribunal finds that those costs were reasonable.

117. The Tribunal cannot award compensation for asserted losses suffered by the Applicant, but in any event, there is no evidence of any such losses. There is no evidence that the money has been "mixed up" as asserted by the Applicant, but in any event, this would not impact on the lawfulness or reasonableness of any charges for these works.

Damage to fence and brickwork – Item 16 on Scott Schedule

118. The Scott Schedule states that this has not yet been repaired and therefore there has been no charge levied for this. The Applicant seeks an order requiring the repair, financed through the insurance policy. The Tribunal has no jurisdiction to make such an order as so does not make any such order.

Costs

119. Section 20C of the Landlord and Tenant Act 1985 provides as follows:

"(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…. the First-tier Tribunal… 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".

120. When faced with such an application, the Tribunal may make such order as it considers just and equitable in the circumstances.

121. The relevant part of paragraph 5A reads as follows:

"A tenant of a dwelling in England may apply to the relevant… tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs'.

122. The Tribunal has made some findings in favour of the Applicant and has found that there was non-compliance with the s.20 consultation process in respect of items 2, 3 and 4 in the Scott Schedule. Taking account of all the findings made by the Tribunal, it determines that it is just and fair that the Respondent cannot recover its costs of the Tribunal proceedings through the service charge provisions within the Lease or by way of an administration charge.

123. The Tribunal therefore does make an order under s.20C and an order under paragraph 5A of Schedule 11 to the 2002 Act.

124. The Applicant has made an application for a refund of the fees (£300) that he has paid in respect of his application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In view of our findings above, we do make such an order. The Tribunal has regard to the matters set out in paragraph 54 and has had regard to the relative success of the Applicant: *Cannon v 38 Lambs Conduit LLP* [2016] UKUT 371 (LC). The Tribunal makes an order for reimbursement of 50% of the Applicant's fees, i.e. £150 from the Respondent.

Judge Sarah McKeown
13 March 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).