FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UC/LSC/2024/0018
Property	**:**	55-57 High Street, Arundel, West Sussex, BN18 9AJ
Applicant	**:**	Paul Meredith
Representative	**:**	----
Respondent	**:**	Simon Birch
Representative	**:**	Hugh Rowan of counsel instructed by JMW Solicitors LLP
Type of Application	**:**	Applications to determine service charges– section 27A Landlord and Tenant Act 1985 Applications that costs not be recoverable as charges- section 20C Landlord and Tenant Act 1985
Tribunal Member(s)	**:**	Judge J Dobson Mr P Smith FRICS Ms T Wong
Date of hearing	**:**	23rd January 2025
Date of Decision	**:**	14th March 2025

DECISION

Summary of the Decision

1. **In respect of service charges for the service charge 2023, the Tribunal determines that none of the charges demanded were payable.**

2. **If the service charges had been payable, the Tribunal determines that the payable service charges would therefore have been £46,500.89.**

3. **The Tribunal grants the Applicant's applications pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 such that the Respondent's legal and litigation costs of the applications may not be recovered as service charges or administration charges.**

4. **The Respondent shall pay to the Applicant the application and hearing fees of £320.00 within 14 days of issue of this Decision.**

The Background

5. The Applicant is the lessee of a head lease ("the Lease") granted on 11th November 2011 for one thousand years of the residential parts of 55-57 High Street, Arundel, West Sussex, BN18 9AJ ("the Property") (also described as 55a and 57a). He was registered as the lessee of that on 28th November 2013. The Respondent is the freeholder of 55-57 High Street, Arundel, West Sussex, BN18 9AJ as a whole ("the Building"), having completed his purchase on 23rd March 2023 The freeholder was previously a company, Green Gate London Ltd. The Property includes the roof of the Building (but not airspace above).

6. The Property includes six residential flats, some the subject of an individual sub- lease. The presumed exceptions are two flats owned by the Applicant. The Respondent is also the lessee of one flat. The Building contains commercial premises to the lower floors and the residential flats to the first, second and third floors. The Building has a frontage straight on to the street. There is an enclosed area at the rear which also contains an additional dwelling, the dwelling having its own title and not falling within the headlease.

7. The parties have an acrimonious history and as one element of that, they have been involved in other Court and Tribunal proceedings. Those include an application in May 2023 in response to which the Tribunal granted dispensation from consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act"), pursuant to an order dated 26th July 2023 (which has been termed the "Dispensation Order" and which term the Tribunal adopts). That related to drainage works, pointing and scaffolding the service charges demanded for which are challenged in these proceedings.

8. There were also proceedings between the Applicant and sub- lessees and the previous freeholder, in the course of which a single joint expert James Collett BSc (Hons) MRICS of ProMission Limited was instructed and he produced a report signed on 21st September 2021 [S108- 142] and which resulted in a County Court Order dated 1st March 2022 [S102- 107] ("the Court Order") for the then– freeholder to undertake various works to the Building. This is perhaps also as good a point as any to identify that Mr Collett also prepared a report, instructed by the Respondent dated 12th May 2023 [137- 146]. He had inspected in 5th May together with a (unnamed) conservation officer from Arun District Council. Various issues with the Building were identified, extending beyond the matters within these proceedings.

9. The Respondent, through his agent, served demands for actual (not estimated) service charges as further explained below.

The Application and history of the case

10. The Applicant sought determination of service charges pursuant to section 27A of the Act for a service charge year described as being 2023- 2024 by way of an application dated 30th January 2024 [7- 19] raising various challenges, including to the greater proportion but not all of the costs incurred by the Respondent.

11. The Applicant also made an application for an order under section 20C of the Act that the costs of the proceedings should not be recoverable by the Applicant as service charges and an application pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the title of which will continue to be used in full), for an order that the liability to pay an administration charge in respect of contractual litigation costs be reduced or extinguished. Indeed, he also sought to do so for other lessees but without authorities from them for that.

12. Directions were given [53- 57] listing a Case Management and Dispute Resolution Hearing and at that further Directions were given for the preparation of the cases for final hearing [70- 76]. It was also identified at the hearing that Counsel attended for the Respondent and had no instructions other than to re-iterate the contents of a position statement, which the Tribunal determined amounted to unreasonable conduct on the part of the Respondent. The Directions included provision for expert evidence by way of a written report and oral evidence at the final hearing.

13. The Applicant produced a PDF bundle amounting to pages in advance of the final hearing and did so, amounting to 319 pages. The Respondent also produced a bundle of a further 271, which is described as a Supplemental Bundle, although only at lunchtime on 22nd January 2025, the day before the hearing.

14. Whilst the Court and Tribunal make it clear that they have read the bundles in full, the Tribunal does not refer to various of the documents in

detail in this Decision, it being unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that they have been ignored or left out of account. Insofar as reference is made to specific pages from the Applicant's bundle that is done by numbers in square brackets [ ], as occurs in the preceding paragraphs where appropriate, and with reference to PDF bundle page-numbering. Where reference is made to specific pages from the Respondent's supplemental bundle that is done by numbers in square brackets prefixed by an "S" [S], with reference to PDF bundle page-numbering.

15. It should be added, and this is perhaps as good a place to do so as any, that this Decision seeks to focus on the key issues in relation to the areas of dispute. Other matters mentioned in the bundle and some at the hearing did not require any finding to be made for the purpose of deciding the relevant issues remaining. Even so this Decision is longer than preferable. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

The Lease

16. The Lease was provided [22- 52] with the Applicant being an original contracting party (but the Respondent not being).

17. Clause 1 includes various definitions, including of the Building, the Common Parts, the Property and matters related to the Service Charge and Service Cost. The service charge year is 1st January to 31st December- and it is worth identifying that the dispute was with regard to service charges in the 2023 service charge and calendar year as opposed to 2023- 2024 as stated on the application. The Applicant's share ("Tenant's Proportion") is identified as:

    "52.76% "or such other fair proportion as the Landlord shall determine as being reasonable in respect of the Property having regard to the nature of the expenditure and the parts of the Building benefitted by it".

18. Clause 7 addresses Services to be provided by the Respondent, Service Costs and matters related to the Service Charges.

19. There are various Services which the Respondent appears to perform and set out in clause 7.1. Those include maintenance, repair and decoration of the Building including the common parts, Common Plant and Service Media. Employment of various professionals, including solicitors and managing agents "in connection with the management administration repair and maintenance of the Building" and preparing an account are included. The Service Costs are then defined in clause 7.2 and unsurprisingly are the costs incurred in providing the Services and various related matters. There is a separate provision in clause 14 in relation to enforcement of covenants and related matters.

20. Clause 33.3 seeks to make the Respondent's obligations to repair the structure and Service Media and to deal with certain other matters subject to payment by the Applicant (although if it succeeds that must in any event be subject to sums falling due for payment).

21. Clause 33.4 addresses the administration of the service charge. That requires the Respondent to prepare a summarised and certified account at the end of each Service Charge Year "showing a summary of the items comprised in and the amount of the Service Costs and the Service Charge". The certification can be by surveyors or managing agents. There must also be an estimate for the next Year also certified. The Applicant is required to pay any balancing charge within 21 days of receipt of that account, or the Respondent gives any credit, whichever may be appropriate. The Applicant must pay on account of the year just started on the first day of each Service Charge Year.

The relevant Law

22. Essentially, pursuant to section 18 of the Act, the Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor's costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.

23. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. Section 19 provides that a service cost is only payable insofar as it is reasonably incurred and works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the costs which are to be met through the service charge.

24. In order for service charge demands to be valid, they must comply with the requirement of sections 21 of the Landlord and Tenant Act 1985 ("the 1985 Act") and 47 and 48 of the Landlord and Tenant Act 1987 ("the 1987 Act").

25. Section 21 provides that a summary of the rights and obligations of tenants of dwellings in relation to service charges must be supplied.

26. Section 47 provides that when a written demand is made for rent or service charges, the demand must contain the name and address of the landlord and if a demand does not contain the information, the service charge or similar shall be treated for all purposes as not being due at any time before the information is provided.

27. Section 48 is a related provision which says that if the landlord fails to provide an address at which notices may be served any rent, service charge or similar otherwise due is not due.

28. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.

29. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

30. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to this dispute. The Tribunal is well aware of the relevant law and has applied it in reaching this Decision. However, various specific elements are raised by counsel for the Respondent and so the Tribunal identifies those matters.

31. It is important to identify the well- established principle that a lessee cannot simply require the landlord to prove the reasonableness of costs incurred in the provision of services. Rather the lessee must raise a matter sufficient to require a response from the landlord. The landlord must then provide evidence that the cost was reasonable and the service charge payable in response to that.

32. Mr Rowan relied upon a statement by Judge Cooke in the Upper Tribunal in *Wynne v Yates* [2021] UKUT 278 (LC):

> "… it is well established that a tenant's challenge to the reasonableness of a service charge must be based on some evidence that the charge is unreasonable. Of course, the burden is on the landlord to prove reasonableness, but the tenant cannot simply put the landlord to proof; he or she must produce some evidence of unreasonableness before the landlord can be required to prove reasonableness."

33. There are various other judgments stating the same, including recently in Rana v Assethold Limited (2025) UKUT 19(LC), where the leaseholders had raised a clear prima facie case that the disputed costs were not payable under the lease, and/or were not reasonable in amount, and the landlord, had not filed any evidence as to the payability and reasonableness of the costs. The point was expressed as:

> "When the FTT's jurisdiction under section 27A is invoked by leaseholders, they must raise a prima facie case that indicates that a cost was not reasonably incurred, or that an estimated charge was not reasonable. Once they have done so the evidential burden shifts to the landlord to show that the expenditure, or the charge (as the case might be), was reasonable."

34. Mr Rowan additionally relied specifically upon an observation specifically about cost in *Enterprise Home Developments LLP v Adam* [2020] UKUT

151 (LC) and relying on a comment by Wood J in the relatively well- known and oft- cited case of *Yorkbrook Investments Ltd v Batten* (1986) 18 HLR 25 that:

"Where … 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."

35. He also quoted from Service Charges and Management, 6th Edition, a book authored by various counsel from Tanfield Chambers, the set of which Mr Rowan is a member, where it is said:

"[I]f tenants seek a declaration [that a service charge is not payable], they must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case make clear the necessity for the Tribunal to ensure that the parties know the case which each has to meet and for the evidential burden to require tenants to provide a prima facie case of unreasonable cost or standard."

36. The Tribunal has borne those quoted matters in mind, although it should be said that the Tribunal does not agree with Mr Rowan that the Applicant's case to be answered by the Respondent is unclear.

37. The Tribunal was also reminded by Mr Rowan in support of the proposition that where the landlord is obliged to repair and there is a proper choice between different appropriate methods of repair, it is for the landlord to choose which method of repair to adopt.

38. Mr Rowan relied specifically upon a statement in *Hi-Lift Elevator Services v Temple* (1995) 70 P. & C.R. 620 where the Court of Appeal held:

"As a matter of practice, it is often possible to remedy a disrepair in a variety of ways. In general, it will be for the covenantor to decide upon the appropriate method of repair. Thus, where a landlord covenants to keep the structure and exterior of a building in repair, and the tenant covenants to contribute towards the cost of so doing, it is for the landlord to decide how to repair, although his decisions must be reasonable."

39. There are again various statements of the principle in different cases and it is a well- established one. It has also been said that the fact that the costs will be borne by the lessees is however a matter to be borne in mind- *The London Borough of Hounslow v Waaler* [2017] EWCA Civ 45.

40. It is well- established law that the Leases are to be construed applying the basic principles of construction of such leases, and where the construction of a lease is not different from the construction of another contractual document, as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36, so that the Tribunal is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood the words in the contract to mean. As no obvious issue of

interpretation arises, it is not necessary to set out more detail of the required approach.

The Hearing

41. The hearing was conducted at Havant Justice Centre in person. The Applicant represented himself. The Respondent was represented by Mr Hugh Rowan of counsel. Mr Rowan provided a thirteen- page Skeleton Argument on 22nd January 2025.

42. At the same time, the Respondent's solicitors provided the supplemental bundle mentioned above. As identified above, the Tribunal had given appropriate consideration to that and explained to the parties having done so having concluded on balance and having applied the relevant provisions of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 that it was appropriate to do so, notwithstanding the startlingly late provision and lack of flagging in advance.

43.. The Tribunal permitted the Respondent to rely upon the documents on the basis that the parties had both seen them previously and there was nothing new, although not without a degree of caution given the quantity of documents and doubtful assistance of some of them.

44. In the event, and as explained on behalf of the Respondent, predominantly the documents related to the dispensation proceedings mentioned above and did not have bearing on this Decision- hence the doubtful assistance mentioned just above. The most notable inclusions were the most recent three service charge demands [196- 214], which the Respondent had identified were not included in the original bundle; the invoices for the service costs on which the charges were based [216- 233] a Schedule of Condition report from 13th July 204 [242- 271], which Mr Rowan highlighted post- dated the service charges in issue but contained photographs and in the event was useful.

45. The Tribunal identified to Mr Rowan that the service charge demands appeared not to be valid- the address of the Respondent was missing. As that issue had apparently not been considered, the Tribunal allowed time for instructions. Having taken those, counsel for the Respondent conceded that the demands did not contain the Respondent's address. However, he raised various other matters, which the Tribunal addresses below.

46. The Tribunal then proceeded to hear about and to consider the service charges and the costs which lead to them themselves. In the course of that, the Tribunal received oral evidence from both the Applicant and the Respondent. The Tribunal was also in possession of a statement from the Applicant [78- 80] (albeit headed Statement of Fact rather than witness statement specifically) and one from the Respondent [83- 89].

47. The Tribunal additionally received oral evidence from Mr Sztyber. The Tribunal noted the written expert evidence of Mr Sztyber did not meet usual requirements, lacking appropriate declarations and any signature on

the report. He explained that he had not been an expert witness in proceedings previously, although the Tribunal did not find that a complete answer to the omissions. Mr Sztyber did express understanding that any opinion had to be his correct professional opinion and the Tribunal was sufficiently content that he did understand.

48. The Tribunal is grateful to all of the above for their assistance with the application and that despite their difficult history the parties themselves conducted the hearing in an entirely proper fashion.

49. The Tribunal did not inspect the Property. The Tribunal carefully considered following the hearing whether it was appropriate to do so. However, the Tribunal was content that the nature of the Building and the matters in respect of which there was a need for visual evidence were sufficiently demonstrated by photographs so that it was not necessary to inspect in order to the determine the matters requiring determination.

Consideration of the Disputed Service Charge Issues

50. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the matters below.

51. It merits identifying that the service charge year had been identified on behalf of the Respondent to correctly be the calendar year 2023, albeit that service charges had been demanded in February 2024 following the end of that year.

The validity of the service charge demands

52. The demands served by the Respondent [S196- 202] plainly did not include the Respondent's address as required, only the address of the agents, Chandler Hawkins Surveyors. Given the, inevitable, concession by the Respondent's counsel, no finding of fact is required about that, simply though any such finding would have been. Arguably, no finding would have been required in any event given that the Tribunal is entitled to take an unopposed point as accepted and the point raised by the Applicant- see further below- had not been opposed.

53. In relation to this aspect, counsel for the Respondent indicated that in the event that the Tribunal determined that the demand was invalid, he was instructed to pursue an appeal. The Tribunal was rather surprised that comment made at a time that the Tribunal had not even started considering the point, still less made any decision. It is quite difficult to identify how the Respondent might have known that he wished to pursue an appeal without having any indication of the basis for the Decision reached by the Tribunal, assuming always that Decision to be against the Respondent in the first place.

54. The Tribunal finds it an odd feature of submissions sometimes made on behalf of parties that where a point of law may go in their favour, they refer

to it as a point of law and urge the Tribunal to apply the law. In interesting contrast, it is not uncommon for submissions to be made on behalf of parties where a legal point may be against them, to refer to that point as a 'technical' one.

55. The Tribunal generally struggles with the notion that as a Tribunal charged with determining legal disputes and applying the law, a matter of law might be described as a 'technical' one as if to somehow reduce its relevance. As just stated, the Tribunal is obliged to apply the law. The law covers many matters which may properly be described as quite technical, amongst a variety of other matters covered by the law. However, for a lawyer to urge against applying the law and to suggest the importance of their stock in trade is minor is a somewhat odd thing.

56. There can be no question that if the Tribunal applies the provision of section 47 of the 1987 Act, the only outcome can be that the demand on behalf of the Applicant was not a valid one and therefore the service charges are not payable. It is presumably for that reason that the Respondent essentially urges the Tribunal not to apply statute law in this case. It might be considered somewhat ironic that it is the party which has been represented by lawyers throughout who is the one seeking to persuade the Tribunal not to apply the law.

57. The point about the landlord's address is not a new one which arose in the hearing. The application form specifically states [18] in respect of the demand [158] by then received and in the sum of £47, 590.06:

> "It was not accompanied by a summary of rights and obligations as required. It does not comply with the section 47 of the Landlord and Tenant Act 1987."

58. It is right to say that the Applicant's statement of fact did not add anything to the application form. That said, neither was there any hint that the point was being withdrawn, lack of expansion of the point and withdrawal of the point being quite different.

59. The Tribunal did not therefore seek to take any new point. The Tribunal firmly understood the point to be taken by the Applicant, given that specific statement about section 47 in the application form. Not only was the issue raised but the specific section was also referred to. The matter could not have been much clearer to that extent.

60. It must be the case, the Tribunal accepts, that the Applicant was at the particular time referring to the informal notification of the amount of the service charge sent to him dated 14th December 2023. It is right to say having considered the Supplemental Bundle, that the actual demand was more in the focus of the Tribunal. Therefore, the Tribunal queried whether the Applicant meant to refer a demand for service charges up to December 2023. However, it is apparent on reflection that he meant the informal demand made in December 2023.

61. It is therefore plain, and the Tribunal took careful note of it, that the Applicant did not specifically refer in the application form to the incorrect address in the actual demand because he had not yet received it– rather inevitably given that it had not yet been raised at that time, that demand is dated 2nd February 2024, and the application is dated January 2024. Strictly, if the written application was taken as being the full extent of the Applicant's case, it could be said that the Applicant did not in terms raise before the Tribunal in that application the section 47 point about the actual demand.

62. However, the Tribunal considers that would ignore the obvious reality of the Applicant's case. It was entirely obvious that he relied on the provisions in section 47. It is no stretch at all to consider that if he had been in receipt of the actual demand at the time of the application being made, which was alike with the informal one in terms of the address, he would have raised exactly the same point about that in his application form. Simply, because of timing he could not do so specifically.

63. When the Tribunal sought to clarify for certainty's sake whether the Applicant did take the same point about the actual demand as he had about the informal demand, he was clear that he did so. That was an unsurprising answer. Given that the address as presented on the informal demand was the same as presented on the actual one, it would have been illogical for the Applicant to take the point about the one that he had seen at the time of submitting his application and then not take it about the exact same lack of the appropriate address in relation to the later document.

64. The Applicant was very definite about this position. He said that his own managing agent had looked at the service charge demands and had picked up the failing each time. He also suggested that the amounts were incorrect and duplicated.

65. In addition, the exchange of emails between the parties in February 2024 [155] specifically included the section 47 issue. Whilst Mr Rowan suggested that the Applicant was both unconcerned about the section 47 point- although the basis for that suggestion was at best unclear- and knew how to communicate with the landlord if he wished to raise it, it was in practice abundantly clear that the Applicant had done just that. The Respondent had obviously identified in February 2024 that the Applicant raised the matter because he referred specifically to section 47. He complained about the Applicant:

> "making excuses that your service charge notice has not been served precisely correctly. This is due…….. His team have since re-issued your notice in accordance with your lease and section 47".

66. Unfortunately for the Respondent, the point is not about the demand not being served "precisely correctly" but rather about it complying with the requirements of the statute and producing a liability on the part of the Applicant to pay. Or indeed not doing so. More unfortunately for him, the

agents had not in fact re- issued the demand in accordance with section 47 despite the issue having been specifically raised.

67. Whilst Mr Rowan sought to argue that the point had not been raised in the original application, that was plainly wrong. His next argument that the Respondent was prejudiced similarly.

68. Insofar as the Skeleton's Argument asserted that the Applicant's "pleading" is unclear, the Tribunal disagreed, including about this aspect of the case. The Respondent was apparently able to identify relevant issues in the case although may not for some reason have identified those related to breach of statutory requirements and the provisions of the Lease despite those being identified in the application form, given that he did not address them. The application form is not of course a pleading in the manner that term would be understood in Court proceedings and the Tribunal does not require the formality that may be required in Courts. That said the section 47 and other statute and Lease provision points are simply and clearly stated and the section 47 point in particular is not a complex one.

69. Any consideration of the address in the informal demand and the actual demand would have revealed that the point raised by the Applicant about the informal demand equally applied to the actual one. If the Respondent had been in any doubt that the point might be taken in response to the actual demand just as it was in response to the informal demand, the Respondent was able to seek clarification. Quite contrary to the Respondent being prejudiced, the issue had been flagged up and was there to be considered. In explicably, it appears not to have been.

70. The Tribunal was fully entitled to take the challenge as raised to the actual later demand in light of the above timing and where the Applicant made the statement he did. It would have been nonsensical to do otherwise.

71. On the basis of the demand before him at the time of applying, the Applicant raised the question of the lack of the correct address for the landlord being shown on a demand, so the issue was a live one. It had been part of the Applicant's case from before the application and remained part of it.

72. Whilst counsel for the Respondent sought to suggest that the Tribunal was taking a point of its own initiative, that is plainly incorrect. In contrast, the Tribunal simply identified and sought representations about a point which was squarely raised by the Applicant in his application form.

73. In effect, the Respondent's submission is that the Tribunal should refuse to apply relevant statute law which has been raised in favour of an unrepresented party and ignore that law for the benefit of a represented party. The Tribunal is effectively being asked to decide that a demand not valid applying the law is in fact valid. And to do so where the point could easily have been identified from being specifically stated in the application form and where consideration of the statutory requirements as against the

document would unfailingly have revealed the error in the demand, consequently long before the proceedings reached final hearing.

74. The Tribunal declines to follow that course of action. The Tribunal is entirely satisfied that the point was before it and required determination. The Tribunal applies the law to an issue raised before it.

75. The Tribunal adds that if the Applicant had not specifically raised the point about the requirements of section 47 of the Landlord and Tenant Act 1987, the Tribunal would no doubt have needed to consider with some care whether it ought to take the point of its own initiative. It by no means follows that the Tribunal would have declined to do so then.

76. In practice, the Tribunal does consider whether parties have complied with statutory requirements and the terms of the Lease where it considers that appropriate. It is an expert Tribunal and deals with many parties who are represented and who do not know legal requirements. Raising matters where it considers that appropriate falls with what have been described as 'the honourable traditions of tribunals'. The fact that a party has not realised a legal point exists does not alter the Tribunal's knowledge or indeed erase the obligation of the Tribunal to apply the law. That said, the Tribunal should be cautious about whether to raise such a point and may or may not decide it to be appropriate to do so in a given case. The situation did not arise in this case and so it is impossible to know what the Tribunal would have done if it had.

77. It is not necessary to say any more about that wider approach. The Tribunal needs only address the specific one here, where the Applicant has raised compliance with statutory requirements and so it is directly a point before the Tribunal which the Tribunal must determine.

78. The Tribunal finds that the actual demand, as with the informal demand, fails to provide the address of the Respondent pursuant to the requirement of section 47. It is not a valid demand to trigger an obligation to pay. That is the inevitable conclusion of applying the requirement of section 47 to the demand served.

79. It necessarily follows, that the service charges demanded for 2023 were not payable. The Applicant's application therefore necessarily succeeds in that none of the service charges the subject of this case are payable. Strictly, that is the end of the matter.

80. For completeness, nothing was said in the hearing about the section 21 point- that is to say the summary of rights and obligations. In a similar vein to the section 47 aspect, the statement of fact again added nothing but neither did it withdraw the point. The Respondent made no response and in other circumstances, the Tribunal may well have treated that as acceptance that the Applicant was correct. The Tribunal is entitled to take an unopposed point as accepted. However, it rather more relevant here that the application pre- dated the actual service charge demand and

where the demand in the bundle does include the summary. It may or may be that explains why no more was said by the Applicant.

81. Given the lack of clarity as to whether the point remained live and the lack of reference in the hearing, and as the outcome reached above would have been the same even if there was a section 21 point, the Tribunal does not consider it necessary to say more and declines to reach a determination.

Compliance with provisions of the Lease

82. In the application form, the Applicant raised a further issue as to compliance with requirements but this time under the provisions of the Lease. The Respondent cited the requirement pursuant to paragraph 33.4.1 for there to be the preparation of a summarised account certified as fair by the landlord's surveyor.

83. The Applicant again said nothing more in the statement of fact produced and also did not raise this matter in the hearing. The Respondent said nothing about it at any stage, continuing the pattern of failing to comment on matters within the application form except in respect of specific elements of the actual service costs incurred and resultant charges. There was no obviously clear documentation related to the point. There is an estimate for 2024 [203- 209] and a demand for a balancing charge (although prior to the year ending) [210- 215] but nothing in this case turns on those.

84. The Lease requirements are clear enough and the Tribunal is content that if they are not followed, the relevant service charges are not due. However, the Applicant failed to demonstrate whether that situation arose and failed to demonstrate any failing on the part of the Respondent. If the further demand served on the day of the hearing was served in a situation in which the Respondent had complied with the Lease- and assuming it not to fall foul of statutory requirement- it might be expected to be valid. Otherwise, it will not be.

85. The Tribunal seeks to say no more lest the issue come before it at a later time.

86. The application form contained an additional query as to whether the demand had been calculated on the basis of six or seven flats, although without the form identifying the relevance of that.

87. However, the Respondent's case was clear, and the Applicant did not pursue the challenge further. Hence, no determination was identifiably required by the Tribunal. If it had been, the Tribunal could not discern a basis on which the matter would render the demands not payable. The basis for the proportion of service costs claimed as service charges was as a percentage of floor area calculated, so the Tribunal can identify that the more properties were counted the different the percentage appropriate might be, but that is as far as the Tribunal can comment.

88. If the Applicant had sought to proceed with that line of challenge, he failed to make it out.

Determination of the service charges which would have been payable

89. Nevertheless, and indeed irrespective of the above determination that the demands were invalid and so the service charges not payable, the Tribunal considers it appropriate to determine the service charges which would have been payable in the event that the demand had been valid.

90. That is only appropriate where the Respondent has now served a new demand and where, once any time provided for in the Lease or other relevant time has elapsed, service charges will be payable. Even if the Respondent had not served a further demand, the Tribunal would indeed have adopted the same approach. There is nothing to be said for further proceedings seeking a determination of matters which can be determined at this point. That would only go to create additional expenditure of time and if a party saw fit to instruct solicitors and/ or professionals, also costs. It is far better to determine the level of service charges challenged and payable so that those can be attended to and further argument avoided.

91. Four elements of the service charges were identified as being in dispute, namely:

    (a) Works to Drains; (b) Legal Fees; (c) Re-pointing; and, (d) Scaffolding.

92. The Tribunal takes each in turn and does in the above order given that the first two are distinct items and the fourth is closely linked to the third.

93. The Tribunal also identifies that although the Applicant complained of lack of supervision from a surveyor in respect of works undertaken, the question remains one of whether the cost is reasonable for the work and the quality of work, surveyor instructed or not. There is no specific impact on the Tribunal's determination. There was also a surveyor involved in respect of the pointing work to an extent, although that is returned to below.

94. The approach taken by the Respondent was rather to employ a contractor, described below as the main contractor, by the name of Aura Renovations Sussex Limited ("Aura"). The Respondent said that he did so to assist him because he was working abroad and that of itself was not challenged. Similarly, that weekly payments were made by the Respondent to Aura, which have not been demanded as service charges. The Applicant was concerned about the competence and experience of the Aura, essentially on the basis that it was a recently established company which he considered that been formed for the purpose of tendering for works and otherwise dealing with works to the Building specifically. The Respondent in his evidence accepted Aura to have been recently established but said that it had been established by contractors who had undertaken other work for him. The Tribunal found no reason to doubt the Respondent on that.

95. In addition, the Applicant alleged in his written case that there was "collusion between all parties employed by the freeholder to manipulate the correct process in cheating the leaseholders out of a correct supervised contract to enhance profit for the freeholder and his chosen contractor".

96. That is a serious allegation to make. It asserts dishonesty on the part of a number of parties. Whilst it is plain that the Applicant was dissatisfied with matters- and it will be seen below that the Tribunal finds not entirely without reason- there is not "clear" collusion, or indeed any identifiable.

97. There was, it seems clear, the employment of sub- contractors by the main contractor, and the selection of other companies to undertake certain matters. However, that is not unusual, and far more would be required- but is not demonstrated- to show anything untoward. No doubt profit was made by the contractors, they would scarcely undertake the work on any other basis.

98. There is also reference to the undertaking of works to what is described by the Applicant as "the freeholder flat conversion". The implication is that the lessees may have been charged for works undertaken to property for which they were not liable and to the benefit of the Respondent. However, all there is presented is an assertion by the Applicant. There is nothing received to support it. It may with hindsight have been useful to receive a set of invoices for works to the Respondent's other property. Nevertheless, the Applicant failed to raise an issue with any discernible basis for the Respondent to be required to produce such evidence in response.

99. The Respondent explained in a Position Statement [81- 82] that the Applicant has been charged 58.21% of the overall costs, rather than the 52.76% provided for as the starting point in the Lease. It is said that the revised percentage is based on an independent calculation of square footage and implicitly that the Respondent therefore considers that proportion as being reasonable. More detail was given in the Respondent's statement. The Applicant has not challenged that aspect and so the Tribunal need say no more about it.

<u>a) Works to Drains- cost £13,355.08</u>

100. These works are said to have been undertaken initially in consequence of a manhole at the rear of the Building having overflowed. It is said that it was also identified that the condition of the drains was such that the erection of scaffolding, more specifically the weight of that scaffolding, would cause the drains to be further damaged and potentially collapse.

101. The Applicant contends issues of (i) a failure to comply with good building practice (producing sub-standard work); (ii) (grossly) overpriced work; and (iii) no consultation or tender process was undertaken with an associated allegation of collusion. The Respondent argues that there is no evidence of i), including no expert evidence; no alternative costing has been provided per ii), at least other than the other quote obtained by the

Respondent; and as to iii), dispensation from consultation was granted by the Dispensation Order. The Applicant also contends in his written statement that the works were not emergency ones.

102. Work was undertaken by a contractor named Drainage Plus at what the Applicant's statement describes as a total cost of £13,555.08 for the three elements of fees- individually £712.00 on 11th April 2023, £3767.00 on 17th April 2023 and £8,875.00 on 25th April 2023 [150 also-invoice list]. It is said the contractor was chosen by Aura, which the Applicant was concerned about. A report was prepared after the initial attendance [230], said to have been on an emergency basis.

103. The Applicant also disputed that any emergency work was required. He also noted that the report had said nothing about a cracked pipe, notwithstanding subsequent work. He complained generally of lack of sign off and lack of transparency. The Applicant also asserted that the drainage contractor had been struck off by HM Revenue and Customs in relation to VAT and he referred to the charge for VAT on the invoices. However, he was not able to say that the invoices should not have included VAT and hence that there was any impact on cost.

104. There was nothing else to suggest the contractor not to be competent. The Tribunal accepted the Respondent's evidence that he had not dealt with them before and that the managing agents had been content to instruct the contractor for other work subsequently. There was no reason to find anything awry in the instruction from Aura.

105. The Tribunal considered the available information and determines that the Applicant has failed to demonstrate that the costs incurred by the Respondent are unreasonable. The service charges are payable as demanded.

106. The Tribunal finds that there was a problem with drainage which required resolution and that the Applicant failed to demonstrate any issue with that being addressed. The initial work was undertaken on an emergency basis and the Tribunal identified no issue with that. The Tribunal also considers there is no good reason to refuse to accept the conclusion of the drainage company that additional work was required.

107. The Tribunal rejects the argument that the work was not reasonable quality or that the cost itself was unreasonable. There was no evidence of those matters. There was no evidence that another approach could have been taken at cheaper cost and still less that such was an approach which meant that in taking the decision as to how to undertake the works the Respondent went outside of a range of approaches open to him in deciding how to repair. The Tribunal noted an alternative quote [315] for the works after the emergency ones.

108. The Respondent cogently explained that the drains had previously blocked and have only done once since the works were undertaken- said to be when the scaffolding was removed and ascribed by the Respondent to

the dirt and dust produced by that. Whilst the Applicant suggests that incorrect work was undertaken, the evidence indicates that the previous problem was addressed and does not identify any difficulty arising from the work undertaken.

109. The Dispensation Order addresses any issue as to consultation.

110. The Tribunal would have allowed the service charges for this item in full if the demands had been valid.

b) Legal Fees- Service cost £1197.00

111. Mr Rowan expressed this as the last element of dispute, although also identified in his Skeleton Argument a lack of clarity as to whether the Applicant did pursue the matter- the application itself mentioned them but the more detailed statement of case did not. The costs were noted to be those incurred by the Respondent in respect of consultation regarding the removal of a fire escape, parapet wall and a box gutter.

112. The Applicant's case in a nutshell was that the documents could have been prepared by managing agents at rather lower cost and that there was no need to instruct solicitors. The Respondent identified a lack of alternative costs from the Applicant and asserted the costs to fall within the Respondent's broad discretion.

113. The Tribunal noted the costs incurred and identified that the Respondent had paid out a rather greater sum than would usually be expected to be incurred for the preparation of such notices for them to be prepared by solicitors where the work is not usually undertaken by solicitors and at the sorts of rates charged by solicitors, indeed the rates charged in this instance. Whilst the Tribunal accepted that in light of the history of disputes about the Building that the Respondent may reasonably wish to be careful, that was not the same as demonstrating that the Respondent's approach produced a reasonable level of cost for the task involved.

114. The Tribunal determined that the Applicant had amply raised a challenge and that the Respondent had failed sufficiently to meet it.

115. The Respondent identified that his managing agents charge £100 per hour. The Tribunal accepts the Respondent's point that the Applicant did not provide a comparative cost, but the Tribunal encounters such notices on a regular basis and is very well able to identify the range of amounts of work and costs involved from its substantial experience. The cost incurred by the Respondent was a matter for him, but it is not within a range reasonable for the service charges produced to be payable.

116. The Tribunal considers that it is a matter for the Respondent as to how he incurs the cost, that is to say as to whether he instructs lawyers, managing agents or others. However, the amount of costs reasonable is,

the Tribunal determines, the amount which in its experience considers is the maximum of the range of fees which an agent would be likely to charge for like work. The Tribunal does not consider that more than four hours in of work in total would have been likely.

117. The maximum amount of cost which the Tribunal determines to be reasonable for the purpose of service charges is £200.00 plus VAT per notice and therefore £400.00 plus VAT overall, although none of that was payable in response to the invalid demands.

c) Re-pointing- Service cost £51,420.00

118. This is the element which required the greatest consideration by the Tribunal. It was both the largest element of the service charges demanded and most contentious and also the most finely balanced in terms of whether the service costs were reasonable.

119. The works arose from the provisions of the Court Order and they formed part of the works for which dispensation from consultation had been given. There was no issue taken about the fact of pointing works being arranged. The principal issue was the nature of those works.

120. The 2023 report of Mr Collett identified as follows:

> "The rear elevation brickwork will need significant repairs. Due to the poor repairs carried out in the past with the brickwork bring badly refaced and lime pointing being replaced with cement pointing, this has resulted in significant moisture being retained by the brickwork and soaking through into the internal areas of the property. Due to the extensive areas of cement pointing noted during this inspection, I would recommend consideration is given to complete repointing of the rear elevation in a lime mortar to match the original. This would allow any moisture in the brickwork to escape. The most badly affected frost damaged bricks should also be cut out and replaced with matching size and colour bricks."

121. In communication with Aura in May 2023 [273], Mr Collett identified a 2:5:1 sand: lime: mortar mix as being recommended. That was therefore quite specific.

122. The Tribunal noted that the Applicant identified that pointing works to the Building were not complete but also that the matter was common ground- the Respondent did not suggest all pointing work to be complete, identifying an area around the fire escape which has not been. The question for the Tribunal related to the work which had been undertaken and charged for as service charges. The Tribunal perceives that the difference between the higher quote from Aura and the service cost for the year reflects work which had and had not been completed, although it was not entirely clear.

123. The Applicant also asserted that works were not undertaken in accordance with the original recommendations and that the result differs in appearance to the other pointing. The Respondent accepted that the

pointing does not look "identical"- the description used in the Skeleton Argument- although the Tribunal considers that something of an understatement.

124. The Applicant particularly emphasised his concern about the competence and experience of Aura in relation to this work: the implicit contrast was with a company experienced in undertaking works to older buildings. There were other issues raised by the Applicant in his statement about how work was undertaken and effects in the course of the work and a number of emails and other document in the bundle [much of 162- 202] refer to that. The Tribunal does not consider it necessary to say anything about that for these purposes- there is no additional impact on the outcome in terms of service charges.

125. It is also right to identify that the Respondent provided to Mr Collett photographic evidence of a test patch of pointing undertaken by Aura and one by J Davies Building Limited, the contractor sought by the Applicant. Those were provided free of indication as to which contractor undertook which patch. Mr Collett did not suggest that photographic evidence to be insufficient. He preferred the patch by the contractor used [301- 302]. Mr Sztyber accepted the consideration of a test panel to be sensible, although observed that the remainder of the job would have to reflect that, which he considered did not occur in this instance.

126. £420 of the service costs related to an invoice of J Davies for preparation of the test patch. The Applicant said nothing about that and hence the Tribunal understands it is not challenged. If it were, the Tribunal would struggle to regard the cost as one not reasonable and not payable by the Applicant in the appropriate proportion. The matters referred to below by the Tribunal therefore relate to the £51,000.00 portion of the cost.

127. Whilst the quote [306- 308] from J Davies was lower, the Respondent followed a process to identify the apparently better of the potential contractors and followed the opinion of the surveyor in the instruction issued. There had been a lot of communications with J Davies [231- 265] who were given a fair crack of the whip. Whilst the outcome has been identified by the Tribunal to be less than impressive, it is difficult to criticise the process followed by the Respondent prior to the pointing works. The Tribunal both accepts that the Respondent was entitled to instruct the contractor which gave the slightly higher quote if he considered it more appropriate to do so and also that instructing the contractor whose work appears to be better is a reasonable approach to take even if that involves a greater cost, within reason. It should be added that the Respondent had previously obtained another quote from a further contractor but that was approximately £10,000.00 plus VAT more than the Aura one. Hence, the Tribunal did not find a challenge to the overall cost in itself to succeed.

128. The Tribunal identifies that Mr Collett appears to have been content with the quality of the pointing work [S61], having inspected the works on 19th February 2024 and identified some remedial works at that point.

129. That contentedness is interesting because, as discussed below, the work undertaken certainly did not amount to complete repointing of the rear elevation in a lime mortar to match the original. There was not complete repointing at all. It was less than completely clear that the work involved the use of lime mortar, the unclear answer to which the Tribunal addresses below. Given the opinion expressed that lime pointing being replaced with cement pointing had previously resulted in significant moisture being retained by the brickwork and soaking through to internal areas previously, that was a matter of significance.

130. The Applicant relied on a letter from Martin Sztyber MRICS of KMS Surveyors Limited, dated 23rd October 2024 and report following an inspection on 22nd February 2024 [93- 136]. The pages of Mr Sztyber's report principally comprise a significant number of pages of photographs showing the rear of the Building and the pointing, both older and as recently undertaken and the subject of the demand, which was very helpful.

131. Whilst the Tribunal is less prescriptive than the Courts as to the content of declarations, that does not mean that reports lacking any identification of duties as an expert can be treated as such a report. That said, the matter involved was not complex and so the Tribunal gave the opinions in the letter and report some weight. The emails of Mr Collett did not meet such requirements either. On the other hand, Mr Rowan had rightly complained that Mr Sztyber had been attempting to assist the Applicant with answers to questions at the start of the Applicant being questioned and appeared unaware even of the inappropriateness of that. Some caution was needed in relation to the evidence of Mr Szytber notwithstanding his oral evidence and the documents from the surveyors.

132. The letter summarising matters states:

> "With the scaffold removed, the attached photographs confirm the inappropriate nature, and the poor execution of the repointing work to the premises".

133. That is followed by a list of thirteen specific observations, including the lack of a weatherstruck profile to match the existing pointing and loss of aesthetics. The report explains further, including that reports of Mr Collett were reviewed and expressing the opinion that the work has not been undertaken in accordance with the guidance dated 12th May 2023, "to repoint in lime mortar to match the original".

134. In oral evidence, Mr Sztyber accepted the pointing had "a degree of functionality" but re- iterated the lack of a weatherstruck profile which he said all textbooks address. He described the pointing as "applied" but "not really tooled to any finish"- it was not properly finished off, particularly in the context of a building in a conservation area. It was put in cross-examination that there were a number of ways to finish off but Mr Sztyber was not persuaded this was a suitable one.

135. The Tribunal considered carefully the photographic and other evidence provided, including in terms of photographs those form the surveyors and others by the Applicant from September 2024 and otherwise. It was satisfied that was very helpful and that, especially where the Tribunal could only have viewed from ground level in any event, in consequence the Tribunal would not be assisted by an inspection of the Building. In the event of less good other evidence, the Tribunal might well have taken a different view. The photographs made it amply clear that the newer pointing and the older pointing do not match. The Tribunal considered the reports of the surveyors and applied its own expertise.

136. The overall categorisation that the Tribunal gave to the pointing work was that it was functional but largely shoddy and certainly cosmetically poor. The impression created was of a number of different workmen having been used and of their work being of varying skill and quality. Where that quality was relatively poor, it was not apparent anything had been done or was proposed to be done to improve that. The Applicant's concern as to the contractor was at least in part borne out. The new pointing and the older are visibly contrasting.

137. The Tribunal agreed that the mortar ought to have been applied with a slant to the exterior face to assist the water dripping out, that is to say weather-struck, and the Applicant was correct to identify that. However, the Tribunal does not accept Mr Rowan's argument that in light of Mr Sztyber's oral evidence, that is as far as the Applicant's case goes.

138. Much of the pointing is flush with the brickwork and also straying over the face of the bricks. It should not do so- Mr Sztyber cited an example [99]. It is hard to avoid the conclusion- and indeed the Tribunal does not seek to- that at least some of the workmen did not know how to undertake the task correctly and at least some supervision and/ or checking was insufficient.

139. That said and given that the main purpose of pointing is to prevent water penetration through what the Tribunal is confident given the age of the Building will be solid walls, there was no evidence received of such further water penetration. Insofar as Mr Sztyber, for example, noted a history of damp problems and the intention of the works being to resolve those, at least so far there was no evidence before the Tribunal that the works had failed to do so in the short term.

140. Mr Sztyber could not in oral evidence be clear whether the mortar used was lime or not. He said that it was hard to tell without raking out the mortar and testing a sample somewhat stepping back from the written report on that point. Nevertheless, he subsequently expressed the opinion that the mortar more likely than not was lime because of the colour. He identified that cement mortar would be greyer.

141. The Tribunal therefore found cautiously on balance that, although the written evidence at least cast some doubt on whether the pointing work the

subject of this case used lime mortar, the pointing was undertaken using lime mortar. As to whether that was in the recommended proportions was something of an unknown but in the absence of any evidence demonstrating it not to be, the Tribunal inferred that it was, or at least thereabouts. The Tribunal had particular regard to Mr Collett's acceptance of the mortar pointing applied, much as the Tribunal takes a different view of the standard of that, and the concession by Mr Sztyber as to the type of pointing.

142. It was less clear whether there may be further effects to the rear elevation in the longer term. Where cement mortar has been left in situ- including if lime mortar has been added to fill gaps without removing the cement mortar- there remains potential for difficulties.

143. As to the first of those, where existing mortar has been left because it fell outside of these repointing works, it does not form part of the service costs giving rise to relevant service charges. The Tribunal is also mindful that the 2023 report of Mr Collett recommends complete re-pointing with lime mortar but does not state complete repointing of the whole elevation, particularly in the same job. As to the second, whilst in considering the indifferent quality of the finish, the Tribunal has been caused doubts as to the cement mortar having been raked out, the other evidence is insufficient for the Tribunal to find it was not.

144. It is important to identify that the previous condition of the rear elevation as revealed by the available photographs had not been in particularly aesthetically pleasing condition. There had plainly been previous patch repairs and not necessarily with an abundance of care. Some of the previous patching had been undertaken so as to produce quite narrow visible lines of mortar: other parts of it had been undertaken so as to produce rather wider lines of mortar. There was staining from mortar on the bricks, although the Tribunal determined on the evidence that at least some of that pre- dated the disputed works.

145. Mr Sztyber implied in his conclusions to his report that the pointing would not meet the requirements of the local council's conservation officer, referring to the need "to match the original colour, mix and profile, particularly in a Listed Building situated in a Conservation Area", although the Tribunal has not identified anything demonstrating the Building listed, much as it is apparent that it is situated in a Conservation Area. Mr Sztyber repeated his doubts when giving oral evidence and said he would have got the conservation officer along to sign off the works. The Tribunal considered that necessarily Mr Sztyber could not know for certain whether approval would have been given or not.

146. The Tribunal also noted the comments of Mr Collett in his 2023 report that "The works detailed as urgent items can be deemed as repairs in terms of conservation and as such should not need listed building consent." The pointing was included in the urgent works. That said, the lack of need for consent as such and any wider need for approval are not necessarily the same.

147. In addition, the Tribunal noted the contents of emails. Those state that the question of whether the pointing is acceptable is a live issue- the conservation officer has not approved the work. The relevant email [91] states:

"Further to our meeting, my colleague has confirmed that the compliance case is still active and that further investigation can take place"

It is less clear whether that investigation will take place.

148. On the basis of the expert evidence of Mr Sztyber, who was cross-examined on the matter but explained his reasoning clearly, the officer is more likely than not to decline to approve the work if he follows matters up. In that event, the mortar may have to be raked out and the pointing may have to be re- done.

149. The Tribunal is disappointed that the Respondent has not organised approval to be considered by the conservation officer, although the evidence indicates would not have achieved approval. The Respondent's failure gives rise to the uncertainty. The aspect of the Respondent's approach prior to the works in particular which can be criticised is the failure to address involvement by the conservation officer, including the identification of any requirements and compliance with those.

150. The Tribunal was also troubled by the email from Martyn White, the Principal Conservation Officer for Arun District Council stating [90]:

"I can confirm that myself and a colleague visited the property and that following this, meetings were organised and then cancelled by the builder"

151. The strong implication is that Aura prevented the conservation officer from properly considering and dealing with the pointing. That hardly re-assures about the approach taken or the quality of the work produced.

152. The Tribunal, having carefully considered the point, determined that on balance the available evidence taken overall is against the conservation officer requiring the work to be re- done, weighing the probability of that, but uncertainty of it, if matters are pursued by the conservation officer together with the uncertainty of there being such an investigation.

153. The Tribunal determines on evidence received that the cost charged as service charges for the pointing work is, just, reasonable, taking account of the quality of the work and the cost incurred The Tribunal judges the indifferent cosmetic effect of the new pointing in the context of the visual appearance of the rear elevation of the Building as a whole. In that context, taking the various matters considered above together and whilst the conclusion is scarcely a ringing endorsement of the works, the Tribunal determined that the service costs were reasonable. The cost in themselves were reasonable and the quality of the work was just within the bounds of reasonable. Hence the consequent service charges would have been payable if they had been validly demanded.

154. The Tribunal adds that it considered whether it ought to disallow a percentage of the cost of the pointing work- and potentially with it a percentage of the cost of the related scaffolding. On balance, the Tribunal concluded that it would not do so for the reasons explained.

155. Nevertheless, if the conservation officer requires further work, in principle the disputed work is very likely not have been of a reasonable standard after all and there would be ample room for argument as to the cost being reasonable. The Respondent would need to put the work to being of a reasonable standard.

156. The Tribunal considers that if the pointing work the subject of the challenged service charge demand has to be re- done because the Council requires it, including the raking out of the cement mortar applied, it will not be reasonable for the Respondent to seek to pass on any additional costs which the Respondent would then need to incur for the cost of the further repointing or any related cost for scaffolding as service charges. For the avoidance of doubt, the pointing work which had not been undertaken is a separate matter. The Tribunal accepts that its view as expressed in this paragraph will not bind a future Tribunal, but reasonably considers that in giving this Decision appropriate respect and where the Decision specifically considers the pointing in some detail, a future Tribunal may conclude it appropriate to follow the same approach.

157. For completeness, whilst the Applicant's statement also expressed concern about the lack of a guarantee from Aura, although the Tribunal perceives that the Applicant meant a warranty that the work would last a given time rather than anything else. The Tribunal also considers that to be an issue for the Respondent in the event that the work proves to have been unsatisfactory and needs to be re-done.

158. Finally, it ought to be mentioned that the Applicant queried with the Respondent in cross- examination about up to one thousand replacement reclaimed bricks but only to the extent of one question. The Respondent said that there were photographs of some bricks replaced but he did not know how many had been used overall. There was an implication that the costs may include bricks not supplied or used. That said, the Applicant said that he had been in touch with one sub- contractor, of several on site, who had suggested hundreds of bricks were replaced, so it was at least not clear whether there were many bricks not used and, if so, how many and further whether any cost might be rendered unreasonable. Given the unclear challenge and unclear merit, the Applicant has not succeeded on any point about the bricks.

159. There was some debate in the hearing about the available information and the lack of the point having been raised previously. The application referred to work not having been undertaken to the recommendations in Mr Collett's report but the title of the section was "Re- pointing" and contained specific comments about re- pointing. To an extent attending to bricks where appropriate was part and parcel of that work but it is right to

say the Tribunal had not understood the point to be live before being raised in cross- examination during the afternoon of the hearing. That said, Mr Rowan did accept that brick replacement as required fell within the contract.

160. It was difficult to get any proper sense of the situation in response to the matter what was therefore arising somewhat out of the blue. There were clearly from the photographic and other evidence issues with bricks prior to the repointing works and at least some of those may not have been resolved but as noted above there clearly were prior problems- the full extent of which was not entirely clear- and the work did not address the entire elevation.

161. The Tribunal did not consider the Applicant to have demonstrated the costs to be unreasonable for this reason on the information before it. The Tribunal noted that might have been fuller if the issue had been clearly raised previously and evidence directed to it but the Tribunal was required to do its best on that which it had received.

d) Scaffolding- £8,448.00

162. The scaffolding was erected for the purpose of facilitating the pointing works referred to above. The contractor was A Star Scaffold Company.

163. The Applicant identified a twelve- week period during which the scaffolding was in situ but during which no work was undertaken. Implicit in the Applicant's case was that added to the cost and did so unnecessarily, thereby rendering the cost to be unreasonable.

164. It is said by the Respondent, and the Tribunal accepts correctly, that three quotations were obtained for scaffolding. The Respondent identified that the contractor of the three which did not charge for rental after a given period was significantly more expensive than both the initial charge and the subsequent rental combined with A Star proved to be. In oral evidence, the Respondent was content to have obtained an "exceptional deal". Having accepted the quote of the particular contractor, it was not in dispute that the scaffolding was erected on 1st May 2023. The Respondent gave two reasons for the delay in commencement of the works.

165. The first is that the Applicant suggested the alternative contractor and there was a period of time before the test patches were available and then considered by Mr Collett in July 2023. One test patch was by a contractor proposed by the Applicant as explained above, although the Respondent says that it took some weeks for that to undertake the test patch, somewhat implicitly adding to the time for which the scaffolding was in situ before other work commenced, and hence adding to cost. The second is that it was also July 2023 when the Dispensation Order was received. The pointing work then commenced in August 2023.

166. The Tribunal identified that there was logic to the scaffolding being erected to facilitate inspection of the wall- that could not properly be

undertaken otherwise, accepting access for a cherry- picker for example not to be possible- and that being a reason for the erection of scaffolding when it was [153] was appropriate. The Tribunal accepted the Respondent's evidence that it would not have been economic for the contractor to part scaffold on one occasion and then scaffold the rest on a second occasion. The Tribunal was not without concern that the scaffolding spent a significant time up and not used save a couple of specific matters, with potential for cost which was not necessary. However, the Tribunal also determined that the principal cost in respect of scaffolding relates to hiring it at all and in connection with the erection of the scaffolding and later the removal of it. Both of those tasks are labour intensive, in contrast to which there is no labour involved in the scaffolding remaining in situ.

167. The Tribunal considered that there was potential for either of the erection of scaffolding or another form of access if appropriate being reasonable for inspection, for removal and for re- erection on the one hand or erection of scaffolding and leaving it on the other hand being more cost effective and with no information as to which was less expensive in this instance. More relevant, the Tribunal identified that, absent a significant saving by adopting one approach rather than the other, both approaches were reasonably open to the Respondent. The Tribunal also accepted, in principle, the approach of obtaining the test patches and having those considered and more generally the approach to the commencement of the works adopted by the Respondent, which is not to detract from the observations made above about the actual work.

168. The Tribunal could identify no basis for challenge to the scaffolding cost, which was appropriate and lower than the other companies would have charged. There was no suggestion of inadequacy in the scaffolding.

169. The Tribunal therefore determined that the Respondent had successfully demonstrated the cost of the scaffolding to be reasonable. The Tribunal would therefore have allowed the cost claimed if the demands had been valid and the service charges disputed had been payable.

Decision in respect of disputed items

170. The effect of the above findings and determinations is that the Tribunal determines that no service charges within this application were payable.

171. However, subject a valid demand, the appropriate maximum service costs in respect of each of the items challenged by the Applicant would have been; a) drainage works- £13,555.08; b) legal fees- £480.00; c) pointing- £51,000.00; and d) scaffolding- £8448.00. The reduction is therefore in the sum of £717.00, of which the Applicant was charged 58.21%. The difference for the purposes of the Applicant is therefore £417.37. The actual service charges of £46,918.26 would therefore have fallen to be reduced by that sum.

172. The Tribunal therefore determines that the service charges payable for 2023 by the Applicant would be £46,500.89, provided always that demands comply with statutory requirements and the Respondent has complied with the provisions of the Lease.

Applications in respect of costs and fees

173. As referred to above, applications were made by the Applicant that any costs incurred by the Respondent in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the Applicant pursuant to section 20C(1) of the Landlord and Tenant Act 1985. No additional application had been made pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act that the costs of the Applicant's application should not be recoverable as administration charges.

174. Section 20C (3) of the 1985 Act, provides "the … Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances". The Tribunal is given a wide discretion. The provisions of paragraph 5A are equivalent and for practical purposes the test to be applied to each limb of the applications that costs of the proceedings should not be recoverable is the same.

175. The provisions of section 20C were considered in *Re: SMCLLA (Freehold) Ltd's Appeal* [2014] UKUT 58, where the Upper Tribunal held that:

> "although [the First-tier Tribunal] has a wide jurisdiction to make such order as it considers just and equitable in the circumstances" (at paragraph 25), "an order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances" (at paragraph 27).

176. In *Conway v Jam Factory Freehold Ltd*, [2014] 1 EGLR 111 the Deputy President Martin Rodger QC suggested that it was:

> "essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make".

177. Mr Rowan in his Skeleton Argument also cited the decision of Whilst there is caselaw in Judge Behrens in *Bretby Hall Management Co Ltd v Pratt* [2017] UKUT 70 (LC), described by him as "familiar", which it is although in the Tribunal's experience of innumerable such applications somewhat less so than the above authorities. Mr Rowan quoted at some length and on balance the Tribunal sets that out in full, so as follows:

> "1. The only principle upon which the discretion should be exercised is to have regard to what is just and equitable in the circumstances.

2. The circumstances include the conduct of the parties, the circumstances of the parties and the outcome of the proceedings.
3. Where there is no power to award costs there is no automatic expectation of an order under s.20C in favour of a successful tenant although a landlord who has behaved unreasonably cannot normally expect to recover his costs of defending such conduct.
4. The power to make an order under s.20C should only be used in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust.
5. One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income."

The last point does not arise in this case.

178. Whilst there is authority as identified in respect of general principles, in practice much will depend on the specific circumstances of the particular case.

179. The Tribunal identified that the Applicant had achieved complete success in challenging the service charges as demanded in invalid demands and then a small degree of success in respect of the level of charges in the event of valid demands. In contrast, the Respondent had failed to address the challenge to validity identified in the application form and to say anything about it during the course of its paper case, failing in the proceedings and where it might reasonably have been expected that the Respondent represented throughout by lawyers would have identified what the Tribunal regarded to be an obvious and fundamental issue. The outcome of the proceedings ought always to have been the outcome which the Tribunal has determined.

180. The Respondent just about scraped through in respect of most of the costs incurred being reasonable when properly demanded, with the large caveat of not being able to charge the Applicant again if the pointing work needs to be re-taken as seems entirely possible but not proved. That is not a great success in itself.

181. Whilst the issue is not one to be dealt with precisely as if the question were akin to an award of costs between parties, success or failure is certainly not irrelevant- and indeed Judge Behrens identified as one of the circumstances to be considered in determining what is just and equitable- and especially not on the sort of point on which success and failure rested.

182. The Tribunal does not consider the conduct or approach of the Applicant alters the appropriate outcome in light of the above. That is despite the Tribunal having given weight to the allegation of dishonesty made by the Applicant and not at all made out by him. That matter made the decision in respect of recovery of costs much more finely balanced than otherwise it would have been but did not go far enough to produce a different outcome in this instance. It might well another time.

183. Taking matters in the round in light of the law, the Tribunal concluded that it is just and equitable to disallow recovery of legal and litigation costs pursuant to section 20C. The section 20C application is therefore granted.

184. In the event that it may avoid the need for any proceedings in respect of administration charges which may be rendered for the litigation costs, the Tribunal makes it plain that it would have taken the same approach to an application made pursuant to paragraph 5A and reserves to itself consideration of any such application if made and any other application which may be made in respect of such administration charges being payable.

185. In terms of fees for the application, the considerations are not exactly the same. For example, the contractual rights and obligations do not apply. In contrast, the outcome is all the more relevant. The Tribunal determined it appropriate to require the Respondent to repay the fees of £320.00 (£100.00 then £2220.00) incurred for the application to the Applicant.

186. It was said on behalf of the Respondent that he would rely on matters which were, unsuccessfully, argued as a basis for opposing the section 20C application, as the basis for an application for an award of costs against the Applicant pursuant to rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. In the event of such an application, any appropriate directions will be given.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.ogv.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.