FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	MAN/36UH/LSC/2023/0090
Property	Renshaw, Cocksford, Stutton, Tadcaster, LS24 9NG
Applicants	Kevin Andrew Yeomans and Francesca Rosemary Yeomans
Respondent	The Old Golf Club Management Limited (Company number 10172045)
Type of Application	Application for determination of liability to pay and reasonableness of service charges (S.27A Landlord and Tenant Act 1985) Application that the costs are not relevant costs in determining service charges (s.20C Landlord and Tenant Act 1985)
Tribunal Members	Judge Rachel Watkin Surveyor Member – Jennifer Jacobs MRICS
Date of Hearing	16 August 2024
Date of Decision	26 September 2024

DECISION

Decision

The Tribunal has considered the Application and determines as follows:

a) The Tribunal allows the challenge in relation to the insurance for year 2018 and stipulates that the reasonable amount charged is limited to £1705.12.
b) The premiums for 2019 and 2022 are reasonable.
c) The sums claimed for directors' and officers' insurance are not recoverable.
d) In relation to the works to the roof:
    a. The invoices from Eddisons and Proclean in 2018 are payable.
    b. The charges for £1500 in respect of roof repairs to the main roof are not payable by the Applicants.
    c. The cost of the repairs to the main roof as set out in the invoice dated 17 September 2020 in the sum of £8184 should be reduced by 10%.
e) The Applicants must be provided with a credit for 62.5% of the invoice of £318 for works to the drains in October/November 2020.
f) The reserve fund must be credited in the sum of £4,004.99 or the Applicant's share in that sum credited to their service charge account.
g) The Accountancy fee in the sum of £396 for the year 2021 is reasonable.
h) The fees for the Health and Safety (2020) and Fire Risk Reports (2022) in the sum of £210 and £312 are not recoverable.
i) The cleaning fees of £450 are not recoverable.
j) No order in relation to the late payment fee of £36 which should have been refunded following the 2019 decision.
k) A reduction of 10% to the managing agents' fees for the years 2018-2019 and 2020-2021 is appropriate.
l) The managing agents fee charged to the applicants for 20/21 must be reduced by the sum of £144.
m) The fee charged for providing consent for alterations to the conservatory is not a service charge and, therefore, the question of whether it is payable has not been determined within these proceedings.
n) The costs incurred by the Respondent in connection with the Application may not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Background

1. This is the decision of the Tribunal in the Application by Mr and Mrs Yeomans (the "**Applicants**") dated 31 October 2023 for service charges for the years 2018 to 2020 to be considered.

2. The Applicants reside at and are the leaseholder owners of the property known as Renshaw, Cocksford, Stutton, Tadcaster, LS24 9NG (the "**Property**") pursuant to a lease dated 25 August 2005 (the "**Lease**"). The building (the "**Building**") consists of 5 residences, Renshaw, Cocksford Lodge, Vale View, Northcote and Dacre (the "**Residences**") all of which are subject to long leasehold interests (the "**Leases**")

3. In around 2007, it is understood that the owners of the Residences together purchased the freehold title to the Building from the original owner with Cocksford Management Company Limited being established as a vehicle for the purchase. Each of the owners of the Residences held one share in the company and appointed one director.

4. At the end of 2016, in circumstances which remain unclear, the freehold was transferred to the Respondent without the consent of the Applicants or the owner of Dacre. The other directors resigned in 2021, again the details are not clear, leaving the owners of Cocksford Lodge as the only directors. The Applicants complain about the conduct of the directors of the Respondent.

5. It would appear from the background to this matter that there has been ill feeling towards the Applicants. The reasons for this are not apparent. However, it is unusual for directors of a management company to decide to transfer the freehold of a property without the consent of the other directors and shareholders. Subsequent to that, the Applicants contend that they have not been treated fairly by the Respondent and, in particular, that they have not been provided with documentation to enable them to understand the full position.

6. The Applicants state that it is because of this that they have been forced to apply to the Tribunal for assistance as they do not have full clarity on the sums that have been spent to enable them to consider whether all charges are reasonable or not.

7. In the letter received from the Respondent dated 13 August 2024, the Respondent suggests that the Application is "*misplaced, deliberately or at least needlessly convoluted and simply an indirect form of harassment of the directors of OGCL and*

other tenants and it may result in other tenants making applications almost immediately."

8. In light of the decision that was made by this Tribunal under case at number MAN/36 UH/LSC/2018/0030 (the "**2019 Decision**"), in which various findings were made against the Respondent, the Tribunal considers this comment from the Respondent to be inappropriate. The Applicants are entitled for clarity.

Documentation

9. The Tribunal has had been provided with a 724-page bundle of documents (the "Bundle") in relation to this matter. It is understood that the Respondent has not cooperated with the Applicants in relation to compiling the Bundle and, as a result, the Applicants considered it prudent to include all documentation that had been provided.

10. In the interests of dealing with this matter promptly and bearing in mind the overriding objective, the Tribunal has not been able to consider, and neither did it consider that it would be prudent for it to consider, all of the Bundle but has focused on the documents that have been referred to either within the parties' statements of case or at the hearing.

11. Whilst the Respondent did not attend the hearing, it did provide a response to the Application which can be found at pages 133 to 136 of the Bundle (the "Response"). This Document is not dated and is not referred to within the bundle index save that it forms part of the documents that fall under the heading "Respondent Disclosure". There is a document named "Respondent Statement of Case" within the index with the page number 473 being provided. However, the document at page 473 cannot be considered a Statement of Case.

12. A further document was received from the Respondent by e-mail on 13 August 2024 entitled "OGC position in relation to the Leases and claims by Renshaw" ("**Respondent's Position Statement**"). As this document was served so late, it is within the discretion of the Tribunal as to whether to permit the information to be relied on. Considering all the circumstances, the Tribunal considers that it is of more assistance to the parties for all matters to be considered and, therefore, the information received from the Respondent has been taken into account. However, the Respondent suggests within their documentation:

"If these responses do not address the claims sufficiently further information can be provided if not available in the submitted bundles."

13. The Tribunal must deal with the case in a fair and proportionate way. Both parties have had a full opportunity to provide the necessary documentation. As such, the Tribunal has determined the Application based on the information available. Where sufficient information has not been provided to fully support either party's position, it is not appropriate for the Tribunal to request further information after the date of the hearing.

14. It is disappointing that the Directors of the Respondent have chosen not to attend the hearing. They provide no reason for their non-attendance. Whilst they mention that their managing agent, Mr Williams is not available, "*for medical reasons*", they have not provided any evidence of this nor have they either attended themselves or instructed another representative to be present.

Application to Vary the Leases

15. The Tribunal is aware that the Respondent has made an application to the Tribunal for the Leases to be varied. The application to vary addresses the issue of the service charge proportions. Whilst the Respondent has addressed the same issue within the Respondent's Position Statement, as it does not form part of the Application, it is not presently before the Tribunal and is not part of this determination.
16. In any event, it is noted that the apportionment of the charges was considered at paragraphs 13 to 16 of the 2019 Decision which has not been subject to any appeal. Within the 2019 Decision, it states:

"The Applicants accept that 37.5% is a apportionment of the charges for the Building and we too consider this to be fair and reasonable given the proportion of the building occupied by Renshaw House. This is also in accordance with the proportions under the two former leases for the first floor Renshaw flat (12.5%) and the ground floor apartment (25%)."

17. Additionally, a decision of the Tribunal from 2014 (MAN/35UH/KSC.2011/0036) records that the apportionment of the service charge in relation to insurance had previously been dealt with by the Tribunal and that it was not prepared to revisit that decision. It is understood that the previous decision had determined that the insurance

premiums should be divided equally between the five properties. It is noted that four out of five of the leaseholders in 2011 contended that the insurance premium should be divided equally between them. They took the view that *"the insurance includes elements of third party and public liability insurance the utility of which bears little connection with the size of the properties."* The only party that objected to the equal division was the Applicant, Mr Ball, the leaseholder of Cocksford Lodge who would, in fact, be paying a lower premium if the premium were divided equally. At that time, however, it does not appear that there was any clear evidence before the Tribunal setting out the areas or values of each property to enable proportions to be set on the basis of the area size or value of each of the properties at the time.

18. In any event, the issue of service charge proportions is not before the Tribunal in relation to the present Application.

The Site Inspection

19. Prior to the hearing, the Tribunal panel attended Cocksford and had the opportunity to view the exterior of the Building together with the interior of Renshaw and the interior hallway of Dacre. This enabled the Tribunal to gain an understanding of the nature and size of the Building. The only people present were the Applicants and the leaseholder of Dacre, Mrs Julie Caden.

Brevity

20. In the interests of brevity and the Senior President of Tribunals practice direction dated 4 June 2024, the Tribunal does not repeat the full background chronology, the parties' submissions, or the legal framework within this decision, save where it is relevant or necessary to explain the Tribunals reasons for its decision.

The Issues

21. In order to reduce duplication, the Tribunal will deal with each of the issues raised by the Applicants in turn in full, including the submissions made by each party in respect of each issue and the Tribunal decision.

22. Within the Application, the Applicants also seek clarification in relation to various matters as to the information that should be provided to them by the Respondents.

23. The Applicants are referred to s.21-22 of the Landlord and Tenant Act 1985 Act (the "**1985 Act**") and the right to request that the landlord supplies a summary of the relevant service charge costs which were incurred in the previous year. Thereafter, the leaseholder may, within six months of obtaining such information, require the landlord to provide reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and taking copies or extracts of them.

24. These questions in relation to matters of general clarification have not been considered further below as they do not relate to whether any particular service charges are payable or reasonable.

25. The issues considered are:

    a. Insurance
    b. Roof repairs
    c. Drain repairs
    d. Reserve Account
    e. Health and Safety Report
    f. Fire Risk Assessment
    g. Late Payment fee
    h. Management agents fees
    i. Conservatory Fee

Insurance

26. The Applicants complain that the insurance premiums were too high for the years 2018 and 2019. The premiums from 2018 to 2022 were as follows:

2017	£1736.25
2018	£2,775.36
2019	£1,857.59
2020	£1,377.76
2021	£1222.54
2022	£2095.51

Failure to Fully Insure

27. The Applicants also state that the insurance that the Respondent took out in 2018 contained an excess in respect of flooding in the sum of £25,000 which they contend was excessive and left them without protection in the event that a flood had occurred, particularly as the Respondent did not hold a reserve sufficient to cover the excess. The Tribunal notes that Schedule 7 of the Lease which contains the Landlord's Management Covenants specifically refers to "flooding" as a risk that the Landlord is obliged to insure against.

28. The Applicants contend that this resulted in the property being under insured and suggest that this amounts to negligence. However, the Tribunal's jurisdiction in relation to the present application is to determine whether the service charges are both reasonable and reasonably incurred. Whilst it would appear that the property was under insured as a result of the flooding excess, provided that the sum charged for insurance is appropriate for the actual cover provided, the charges will be reasonable.

Building Insurance Premiums

29. The Applicants contend that the insurance for 2018 and 2019 was both unreasonable due to the fact that it was high in comparison with other years and that it should have been lower than other years due to the high flooding excess.

30. The Respondent denies that the Building was inadequately insured for flooding and state that a separate indemnity policy was obtained to cover flooding. The Respondent accepts that the policy was not provided to the Applicants, stating that there is *"no legal requirement to do so"*. However, paragraph 3.1 of Schedule 7 (Landlord's Management Covenants) to the Lease provides:

> *"3.1 To produce on 14 (fourteen) days notice such policy of insurance or suitable evidence of the contents existence and validity thereof and the receipt for the last premium paid"*

31. Furthermore, the Landlord and Tenant Act 1987 Act provides:

> *"2(1) Where a service charge is payable by the tenant of a dwelling which consists of or includes an amount payable directly or indirectly for insurance, the tenant may require the landlord in writing to supply him with a written summary of the insurance for the time being effected in relation to the dwelling."*

32. Paragraph 6 of Schedule 3 of the Landlord and Tenant Act 1987 Act states:

> *"(1) It is a summary offence for a person to fail, without reasonable excuse, to perform a duty imposed on him by or by virtue of paragraph 2, 3 or 4.*
> *(2)A person committing such an offence is liable on conviction to a fine not exceeding level 4 on the standard scale."*

33. If the Respondent had provided the Applicants with a summary of the insurance (or the policy itself), whether in response to a request for the policy or otherwise, it is likely to have reduced the Applicants' concerns and given them peace of mind knowing that they were covered. It would also have enabled them to liaise earlier in relation to the concerns over the amount of the premium.

34. The Applicants referred the Tribunal to one other insurance quote (page 237 of the Bundle). It is a quote from Aviva in the sum of £1,705.12 (the "Aviva Quote"). In the Respondent's Position Statement, it states that the comparative quote is of limited assistance as the quote would provide cover for a "*commercial golf club and not a residential block"*. In light of comments made by the Respondent this document was closely scrutinised by the Tribunal, and it was not apparent that it related to anything other than a residential block. The Respondent also infers that there may have been difficulties obtaining insurance due to the recent flooding to Renshaw and as the Building is a non-standard conversion. However, Ms Yeomans confirmed to the Tribunal that she had obtained the quote through a broker to whom she had provided the relevant background evidence. In the absence of the Respondent at the hearing, her evidence is accepted by the Tribunal and, as such, the Tribunal accepts that the Aviva Quote is of assistance as providing an appropriate comparative quote.

35. It is noted that the Aviva Quote provided public and product liability of up to £5 million and contained an excess for flooding in the sum of £250. In the absence of any other quotes, and as the Aviva Quotes is approximate to the sums charged for the years 2017 and 2019 and slightly higher than the premiums for 2021, the Tribunal accepts that the sum of £1,705.12 is a reasonable amount for the year 2018.

36. The Applicants accept that it is reasonable for insurance premiums to go up by around 10% per annum. The Tribunal considers this to be reasonable and, therefore, the insurance premium for 2019 is allowed at £1,857.59, which is the sum charged. Years

2020 and 2021 are not challenged as they are reduced.

37. The reasons for the reduction in 2020 and 2021 are not known. However, the Applicants then state that it is unreasonable for the premiums to then increase by £872.97 in 2022. The Applicants content that a reasonable increase should be 10%. However, this is difficult for the Tribunal to assess without the reasons for the decrease in years 2020 and 2021 having been explained and without a further comparative quote having been provided for the later period. The only comparative quote that has been provided was the Aviva Quote some years earlier and if incremental increases were added per annum to that quote then the premium in 2022 would not be considered unreasonable. In the circumstances, the Tribunal is not able to conclude that the premium for 2022 is unreasonable.

Directors and Officers Insurance (D&O)

38. Additionally, the Applicants challenge service charges that have been claimed in relation to D&O insurance. In 2021 and 2022, this was claimed in addition to the building insurance in the sums of £289.50 and £224.34.

39. The Applicants contend that the D&O insurance policy is for the benefit of the directors personally and provides cover against director mismanagement and liability. This is not clearly dealt with in the Lease. However, the Lease is clear that the service charge means:

> "*…expenditure (including value added tax) incurred by the Landlord in carrying out its obligations in this Lease…"*

40. In the Respondent's Position Statement, the Respondent indicates that the management company is of the view that D&O insurance is a legitimate and relevant charge as it provides suitable and necessary insurance for the management company and its directors. It considers that the cost should be borne by the service charge as the only other alternative would be for the directors to pay personally. The Respondent (or the directors) does not feel that that is fair given that the directors are there to provide a function.

41. Whilst the Applicants have indicated that this matter was considered within the 2019 Decision, the Tribunal notes that the only matter considered under paragraph 37, headed "*Companies House Fees and Directors Insurance"* relates to Companies House

fees. Therefore, the Tribunal does not accept that this matter has been previously determined. Thus, the Tribunal needs to determine whether the D&O insurance is an expenditure incurred by the Respondent in carrying out its obligations.

42. In the case of *Wilson v Lesley Place (RTM) Co Ltd*) [2010] UKUT 342 (LC) ("***Wilson***"), the Upper Tribunal held that at paragraph 13:

> *"The liability of the tenant to the landlord in respect of service charges is to be ascertained purely by reference to the terms of the lease, and the fact that the management functions are exercisable by an RTM company does not affect the construction of the lease under these provisions."*

43. In that case, the RTM company was unable to recover the "*costs of establishing and running the RTM company*" which included directors' and officers' liability insurance from leaseholders because it was held that these were costs of *"establishing and running the RTM company…*" and not the costs of carrying out the management or other functions set out within the leases. Whilst this case does not relate to an RTM company, the principle in relation to the director's costs not being costs of "*dealing with the general management of the blocks*" is the same.

44. Furthermore, at paragraphs 15 and 18 of Wilson, it states:

> "15. …. I do not see how it can possibly be said that the costs of complying with [this provision] include the costs of establishing and running the landlord company. Those are not costs of dealing with the general management of the block in terms of their maintenance etc and their insurance. It is always for the landlord, if he wishes to impose a charge upon the tenant, to spell it out clearly in the lease … and it is, as I have said, immaterial for the purpose of construing the lease whether the landlord is an RTM company or a commercial company."
>
> *"18. It is necessarily the case that costs incurred by an RTM company that are not recoverable under the terms of the leases from which it derives its management functions must be met by the members of the RTM company. If not all the tenants are members of the RTM company this will mean that those who are not members will not contribute to those costs…"*

45. The decision of the Upper Tribunal in ***Wilson*** is binding on the Tribunal and, therefore, the sums incurred in respect of D&O insurance are not recoverable through

the service charges.

ROOF REPAIRS

46. The Applicants raise a number of concerns in relation to costs incurred for roof repairs.

Eddisons Report

47. In 2018, a report was produced by Eddisons. The cost of this was £1500 including VAT. The invoice is at page 496 of the bundle. A further charge was also raised by Proclean in the sum of £300 for platform hire to enable Eddisons to inspect for the purposes of preparing the report.

48. Only part of the Eddisons Report has been produced to the Tribunal (pages 496, 497, 537, 538 and 539. At paragraph 4.1, there is a sub-heading, "Main Roof" and gives costs for work to the "main roof". The remainder of the report has not been produced and it is, therefore, not known whether the report also comments on works required to other parts of the roof to the Building. The full report should be provided to the Applicants.

49. The Applicants paid 37.5% of the invoice, as they accept that the works relate to the Building. However, they consider that they cost was unreasonable as, they say, the report was never used, the works were not done. However, the Applicants do accept that some patch repair works, as referred to in the report, were carried out to the roof.

50. On balance, the Tribunal finds that it is reasonable for a report to be obtained and then for the works set out not to be implemented, or not implemented immediately. It could be that the money was not available to do the work at the time or that another solution became viable. Further, it could be that the report would be referred to in relation to the repair works at a later stage and, therefore, that the value would not have been lost in its entirety. Therefore, it is accepted that it was reasonable for the report to have been obtained.

51. The Applicants also contend that their share of the costs of the report should be limited to £250 as the Respondent failed to follow the consultation process set out at s.20 of the 1985 Act prior to the report being obtained.

52. For the costs to be limited where the consultation has not taken place, the costs must be *"any qualifying works or qualifying long term agreement*". Otherwise, the limitation does not apply. The Applicants contend that the cost was one for "qualifying works".

S.20ZA(2) states:

"qualifying works" means works on a building or any other premises, …"

53. In considering whether the report could be defined as "qualifying works" as, arguably, Tribunal notes that "services" and "works" are considered as separate and distinct matters within s.18-30 of the 1985 Act. The meaning of "*qualifying works*" was considered in the case of **Paddington Walk Management Ltd v Peabody trust [2010] L&TR 6** in which it was held that window cleaning did not fall within the definition of "works", since "*Works on a building comprise matters that one would naturally regard as being building works."*

54. Furthermore, in the case of ***Marionette Limited v Visible Information Packaged Systems Limited [2002] EWHC 2546 (Ch),*** the High Court did not consider that professional fees were to be dealt with under section 20.

> *"98. However, in my judgment, the services for which such fees are paid are not part of the works themselves as I have identified them. The works are the physical works which subsection (4)(c) requires to be described; and it is only in respect of those works that estimates are required to be provided by subsection (4)(a) . …. the answer, I think, is that tenants will readily recognise that repairs of any significant scope will be likely to require supervision and that relevant costs, to be recoverable, are subject to the "reasonableness" provisions of section 19 . Accordingly, I do not consider that there was any need for the notice served under section 20 to deal with the professional fees of Fredericks Hearl and Gray. I take the same view in relation to the charges of Paltridge.*

55. Therefore, the Tribunal does not consider that the consultation provisions apply to the preparation of a report in relation to works to be carried out to a building and considers that the cost of the report and the platform are both reasonable and payable.

Roof Repairs to Main Roof dated 9 July 2018

56. The Applicants state that roof repairs were subsequently carried out in relation to parts of the communal roof over two of the Residences – Vale View and Northcote - but not to Renshaw. They refer to invoice number 136257 dated 9 July 2018 in the sum of £1,250 plus £250 in VAT.

57. The Applicants state that this was entirely charged to them, but that their proportion should have been 37.5%. Therefore, £562.50. It is not clear what works were done or why they were charged entirely to the Applicants.

58. The Applicants state that this exceeds the section 20 consultation threshold, that no consultation was carried out and that the works were carried out without their knowledge and that they weren't aware of the works until a Tribunal hearing in December 2018 and that they weren't charged to their account until mid 2021 which the Applicants state is outside the 18 month requirement set out in s.20B(1) in any event. At the hearing, the Applicants were also very clear that they were not notified of the sum incurred or that there was any proposal for the cost to be charged to them at any time during the 18-month period.

59. In the absence of any evidence to the contrary from the Respondent, the Tribunal accepts the Applicants' evidence that the service charges for the cost of these works had not been demanded within 18 months of the charges being incurred and, therefore, that the charges are not recoverable as service charges.

Roof Repairs to the Main Roof dated 17 September 2020 in the sum of £8184

60. A further charge for works to the roof was made in relation to an invoice (although it refers to "quote for roof repairs") dated 17 September 2020 in the sum of £8,184 for repairs to the main pitched roof of the Building.

61. The Applicants state that these works had been referred to by the Tribunal in 2018 and the Tribunal had considered that "*prioritisation of other roof areas ahead of those shown to be leaking [was] misplaced.*" However, it is understood that the works proceeded and the works to the leaking flat roof of Renshaw were still not included.

62. Whilst the Applicants were disappointed that the works had not included works to Renshaw, they accept that works to Renshaw had not been included and, therefore, the Tribunal could only consider whether the costs that had been carried out were

reasonable. The Applicants accept that the works were necessary, and they do not challenge the amount claimed, save for stating that the work would have been at a reduced cost (by about 10%) had the work been done at the same time as the work to Renshaw. They refer to it as an "*economy of scale*" reduction.

63. Whilst the Tribunal accepts that, if the Respondent had been acting reasonably, the works to the flat roof and the pitched roof may have been carried out a different times, in order to reduce the service charge burden for the leaseholders, it also accepts that it would be reasonable for any contractor who is carrying out the work to the flat and pitched roofs at the same time to offer a reduction in the region of 10%. The only evidence in relation to whether the question of the works being done together was considered is set out in the Applicant's Reply to the Respondent's Statement of Case (page 635) where it states:

> *"all leaseholders were asked to vote for a full roof replacement by Smiths; three out of the five leaseholders (Dacre, Renshaw and Northcott) elected for the Hart full roof replacement proposal as part of the section 20 consultation but the management company ignored this and instructed patch repairs …"*

Therefore, the Tribunal accepts that a 10% reduction to the works is more than likely to have been achievable if the Respondent had been acting reasonably and that the sum payable by the Applicants should be reduced by 10%.

64. In relation to the works to the flat roof on Renshaw, it is accepted that the Respondent decided not to carry out those works. The reasons for that are not clear, save for a reference to the document produced by the Respondent entitled "Old Golf Club Management Company Limited Statement of Fact 2020" (page 536) which states:

> *"Mr & Mrs Yeoman's (sic) had Tufdek fitted in 2006 to their flat roof and they have been told that this was never meant to be walked on."*

65. Thus there is clearly a dispute between the parties in relation to whether the cost of the works to the flat roof at Renshaw should have been paid by the Respondent through the service charges. It is also feasible that the Applicants could seek to offset the sums incurred by it in carrying out the works to the flat roof as against service charges due. Whilst there is a provision within the Lease for no deduction to be made from the rent, the same does not appear to apply in relation to deductions from service charges (paragraph 1, Schedule 4) and the service charge does not appear to be defined as rent. However, the Tribunal does not consider that the Applicants are inviting the Tribunal

to declare that their payment for the works to the roof should be reduced by the amount spent by them on their flat roof and it is imperative that, if they were doing so, that they set out their position in that regard very clearly for the Respondent to be fully aware of the claim to which it is responding. Therefore, the Tribunal has not given further consider to the point in relation to potential offset within this decision. If the Applicants do require a resolution to this point, they would need to consider further proceedings.

DRAIN CLEARANCE

66. The Applicants referred, in the Application, to a number of invoices in relation to works to the drains. Their concerns arose from lack of clarity in relation to the invoices. As they were not aware of what the works involved on each occasion, they requested the Tribunal to consider whether the costs were reasonable and payable. However, as they have since been provided with copies of the invoices, they are now accept that the sums were reasonable and payable save for an invoice from Tex Services for £318 (2021). The Applicants are commended for accepting the position and, thereby, reducing the matters requiring consideration by the Tribunal.

67. In relation to the invoice for £318, the Applicants stated that the issue arose in October/November 2020 when they became aware of gurgling in the pipes when the upstairs flat discharged water. The agents informed the Applicants that they could contact Tex Services, the Respondent's contractor, directly. As a result, work was carried out, but it was subsequently charged solely to the Applicants on the basis that it was not a communal charge. The Applicants were later informed that the reason for the charge to them was because the works had not been authorised by the agents.

68. Paragraph 2 under the heading "2020 Dispute" on page 134 of the Bundle refers to the Respondent's account of this incident. It states only that "*The Man Co have an e-mail from Tex Services to confirm that the work Tex Services did for Renshaw was not communal and was solely the responsibility of Renshaw".* If this is correct, it would have been prudent for the Respondent to make further enquiries in relation to the drains concerned.

69. In the circumstances, the Tribunal accepts the account of the Applicants and considers that the invoice should be appropriately apportioned through the service charges. The Applicants should be credited 62.5% of the fees charged.

RESERVE FUNDS

70. The Applicants contend that the sum of £4,004 has been omitted from the Respondent's accounts. They state that the leaseholders paid in a total of £3,250 in both 2020 and 2021.They refer to the balance sheet as at 31 December 2021 (page 322) which shows no starting balance to have been brought forward for the reserves in 2020 but only a "*movement in year*" of a negative entry of £754.99. Therefore, if there was a payment of £3,250 by the leaseholders in 2020, it has not been recorded and there would be a deficit of £4,004.99. The balance of £3,250 is recorded for the year 2021. (Budget page 177).

71. The Applicants state that they do not know what happened to the sum of £3,250 paid into the sinking fund in 2020 or how the negative balance arose due to the Respondent not providing them with accounting information.

72. The Respondent has not provided any explanation in relation to this sum.

73. As no payments into the reserves are shown on the balance sheet, the Applicants were requested to show the Tribunal evidence that the sum had been paid. They referred to page105 of the bundle that shows reserve fund credits of £812.50 to Cocksford Lodge, £1218.75 to Renshaw and £406.25 for each of the three apartments.

74. As the directors of the Respondent did not attend, there was no evidence put forward to the Tribunal from them. The Respondent does not deny receiving the sums but states only that "*the reserves are accounted for in the year end accounts*" (page 135 of the Bundle). It does state, however, that reserved funds were utilised for the purchase of insurance due to one leaseholder refusing to pay service charges. However, it is anticipated that this would have been recorded in the accounts if this were correct and no reference is made to any such recording. Therefore, on the balance of probabilities, the Tribunal concludes that the sum of £3,250 was received by the Respondent and should be shown as a credit to the reserve account on the balance sheet. The explanation that the money was used to pay the balance due from another leaseholder is neither appropriate nor credible.

75. The Applicants, to their credit, however, have sought to find an explanation. The Applicants refer to expenditure allocations for the year ending 31 December 2018, set out on pages 327 and 328 of the Bundle which show to payments to solicitors in the sum of £3,660 which have been placed under a column marked "Reserves". Whilst this was some time prior to 2020, as the balance sheets for previous years have not been provided, the legal costs may have remained on the balance sheet as a deficit for the

interim years. Whilst this doesn't explain the remaining missing sum of £344.99, it may well account for part of the missing sums. In any event, this is of no consequence as the sums have either been incorrectly applied to legal costs that were not claimable from the service charge account (as stipulated at paragraph 44 of the decision of the Tribunal dated 14 March 2019) or the sums are missing.

76. As such, the Tribunal accepts that the reserves paid in the sum of £3,250 have not been recorded and that the deficit of £754.99 is unexplained with the result that £4,004.99 is unaccounted for. It is, therefore, appropriate for the Applicants to be credited in respect of their share of that payment.

ACCOUNTANCY FEE

77. The Applicants challenge the fee of £396 for accountancy fees in the year 2021. They suggest that the accountant has made errors in not accounting for the reserves in the year end reconciliation and management accounts and where it and the Respondent refused to answer any questions in relation to those reserves.

78. In itself, and without further details of any comparative fees charged accountants in similar circumstances over a 12-month period, a the fee of £396, does not appear to be unreasonable, even after a deduction has been as a result of errors.

HEALTH AND SAFETY REPORT AND FIRE SAFETY REPORT

79. The Applicants challenge the following:
    a. fees charged for a Health and Safety Report in 2020 in the sum of £210,
    b. the cost of a Fire Safety Report in 2022 in the sum of £312.

80. The Applicants state that, despite them having requested the reports, they have not been provided. As the reports not having been provided, the Tribunal is unable to assess whether it was reasonable for the costs of the Reports to have been incurred. The Tribunal is not, therefore, able to assess whether it was either reasonable for the costs of the reports to be obtained or whether the costs of the Reports were reasonable. The costs of the reports are, therefore, not allowed to be recovered from the Applicants and their service charge account should be credited.

CLEANING

81. The Applicants challenge a charge for communal cleaning in the sum of £450 that appears in the 2021 service charges. From the accounts, two charges by TWC and one by Rosedale are claimed, each in the sum of £150.

82. The invoices in relation to these fees have not been provided to the Tribunal. Whilst the Tribunal was invited to consider the yard area to the rear of the Building during the site inspection and the possibility that cleaning fees may have been incurred for steam cleaning the area, in the absence of clear information in relation to the reason why the fees were incurred, it is not appropriate for the Tribunal to guess or make presumptions. As such, the Tribunal cannot conclude that the fees for cleaning in the sum of £450 are reasonable.

83. Further to the above, the Tribunal notes that, within the Respondent's document at pages 133 to 138 of the Bundle, it clearly states:

> *"For the record, there is **NO** communal cleaning conducted on site." (paragraph 7)*
> *"The Management Company would repeat that there is **NO** communal cleaning." (paragraph 20)*

84. The cleaning fees of £450 are not payable from the Applicants' service charges and should be credited.

LATE PAYMENT

85. The Applicants have requested that the Tribunal determines that the charge of £36 as included in their service charge account in 2018 is unreasonable due to it not having been reasonably incurred.

86. The Applicants referred the Tribunal to an invoice dated 18 December 2017 which included the following charge:

> *"18.12.2017 Arrears letter £36"*

87. The invoice appeared to relate to the sending of a letter advising the Applicants of arrears on their account on 18 December 2017.

88. The Applicants also referred the Tribunal to a statement of account from 1 January 2017 to 12 July 2019 (page 228 of the Bundle) which showed that on 18 December

2018, their account was in credit by £1,089.40. Therefore, it appears that the charge was unreasonable.

89. This issue was dealt with at paragraph 34 of the Tribunal decision dated 14 March 2019. The Tribunal stated:

> *"…if the late payment charge is in respect of withholding insurance payments, as the Applicants have paid their insurance in accordance with the decision of the previous Tribunal, as upheld by the present Tribunal they have not been in arrears in this respect and therefore any such late payment charge would not be reasonable or payable."*

90. The Applicants stated that the charge remains on their account and has not been credited. In the circumstances, it does appear that the late payment charge was unreasonable, as the account (which shows the insurance payments as credited) indicates that there were no arrears at the time of the charge. However, as this has been dealt with by the Tribunal in its decision dated 14 March 2019, it is not appropriate for it to be form part of any determination in relation to the present application. The sum should have been credited to the Applicants and, if it is not, they need to enforce that previous decision, not re-apply to the Tribunal.

MANAGING AGENTS FEES

91. The Applicants challenge the managing agents' fees.

2018 and 2019

92. The Applicants state that the service charges were not collected during 2018 or 2019, due to the dispute that gave rise to the 2019 Decision. Whilst the Applicants state that the agents delivered no value during this period, they accept that insurance was placed on cover (albeit that the Applicants consider that this was obtained by the directors and not the management company and that the policy was defective - due to the high excess in relation to flood cover).

93. The Applicants also indicate that they attempted to pay an amount in relation to service charges but that their cheque had been rejected, yet attempts were then made by the Respondent for the sums to be paid directly by the Applicants' mortgage company.

94. The Applicants also initially accepted that the managing agents must have liaised with the Tex Services in relation to the work to the drains and the roof but then stated - "*I suspect that the Respondent liaised with Tex services… I think the roof work should have been carried out by the agent, it would have been better. And a better service.*"

95. The Applicants indicated that they had enquired of the managing agents as to when the work to the roof was to be carried out and received a response on 6 June 2018 stating that all work was on hold pending "*the outcome of the Tribunal*" (page 354). However, some work was carried out during this period as an invoice has been produced relating to roof work and dated July 2018. During this time, the Applicants say they continued to suffer rainwater ingress through the roof into the Property.

96. Therefore, the Applicants did accept that some work was carried but indicated that if the agents' fees are to be allowed at all, then it should be reduced by around 10%.

97. The Respondent disputes this claim, stating that the managing agent was appointed and assisted with day-to-day matters including the placing of insurance, administration of bank accounts, the collection of service charges and other related tasks.

98. Although no evidence has been provided of comparative costs for managing agents, the Tribunal considers that the sums charged in the years 2018 and 2019, at £100 per month, was a reasonable charge for the managing agents to carry out a reasonable job. The Tribunal considers that this would have included the obtaining of insurance, demanding and collecting service charge and overseeing works.

99. From history that has been recounted to the Tribunal by the Applicants, it would appear that these works were not carried out properly. For example, the high insurance excess and costs of insurance, the refusal to accept payments and then adding a late payment charge. As such, the Tribunal does consider that it is appropriate for the charges to be reduced by the 10% suggested for this period.

2021 and 2022

100. In relation to the managing agents charges for 2021 and 2022, the Applicants state that the fees more than doubled from £100 per month in 2020 to £220 per month in 2021 and £240 in 2022 without justification. The Applicants state that there was no plan to deliver any improvements to the Building and the only known activity of the managing agent was to place block insurance. The Applicants did not put forward any alternative

rates or comparative quotes for other managing agents. They based their contention on it being unreasonable for the fees to increase so rapidly.

101. The Applicants also complained that the scope of work had changed to stipulate that additional fees would be paid for any responses to be provided to any leaseholder. The Applicants consider this to be unreasonable. They referred to a specific charge of £144, which they state they were charged for questioning the costs of roof slate repairs. They considered that the charge was unreasonable. Details of the charge are within a letter dated 19 August 2021 (page 345 of the Bundle) which show that they charged £120 plus VAT for provide a response to "*an accountancy query*".

102. At page 66 of the Bundle, there is a letter setting out the managing agents fees in relation to queries that relate to aspects of the development which are not considered common parts.

103. The Tribunal accepts that the "*accountancy query*" for which the invoice was raised is more likely than not to relate to the service charges and, therefore, it would appear to be for services that would ordinarily fall within their obligations as management agents, and which would be expected to be covered by their monthly fee.

104. Whilst it is arguable that the fee is not a "service charge" as it has been charged individually to the Applicants, as it relates to works that should have been carried out within the managing agents contract to carry out the works described within the Lease, which are claimable as a service charge, the Tribunal considers that it is appropriate for it to be considered within these proceedings.

105. Furthermore, it is understood that neither the Managing Agents nor the Respondents provide the Applicants with the reconciliations in support of the accounts documents as a matter of course. The Tribunal consider that additional enquiries of the nature of those raised by the Applicants would have been avoided if they had done so.

106. It is not clear whether the sum of £144 has been paid by the Applicants. However, in so far as it has, it should be deducted from the Applicants' service charge account as a response to the queries should have been provided to the Applicants as part of the service provided by the managing agents which is covered by the service charge.

107. In relation to the managing agents' monthly charges, as no comparative estimates have been provided, the Tribunal is unable to determine that a reasonable fee should be lower. Whilst there has been a large increase between 2019 and 2021, it may be that the

rate for 2019 was particularly low. The rate claimed does not appear to be unreasonably high, save for the fact that the Tribunal would expect answers to routine queries to be provided within this amount. As there was a general level of unhelpfulness (with the managing agents refusing to provide either documentation or responses to valid queries without raising additional charges) and a lack of transparency, the Tribunal reduces the management fees by 10%.

COMPASS FEE - RENSHAW CONSERVATORY

108. It is understood that in 2020, the Applicants wished to refurbish the Conservatory at Renshaw. Whilst it is not clear that there is any obligation on the Applicants to obtain the consent of the Respondents to the work, they sought that consent. The Respondents indicated that consent would only be provided a report was obtained and the works were supervised. A fee in the sum of £1140 was charged in them in May 2020 which was debited from their account in June 2020. The Applicants contend that the fee was unreasonable.

109. The Tribunal reminds the parties that its role is to determine whether the service charges are reasonable and payable.

110. The definition of service charges within the Lease does not include any charge for consent to carry out works to the property of any leaseholder, whether part of the leasehold demise or otherwise. In so far as the charge is being treated as a service charge it is incorrect. However, as the charge has not been divided between the other leaseholders, it would appear to be treated as a private matter between the Applicants and the Respondent. Therefore, it is not a matter which the Tribunal is able to adjudicate on within these proceedings.

S.20C Application

111. At section 9 of the Application, the Applicants indicate that they wish to make an application under s. 20C.

112. Section 20C states:

"(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 ….are not to be regarded as relevant costs to be taking into account in determining the amount of any service charge payable by the tenant or any other person specified in the application

(2) …

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

113. In the case of **First Port Property Services Limited Various Leaseholders Of Switch House** [2023] UKU T219 (LC), the Upper Tribunal determined that a breach of covenant that was not relevant to the issue of service charges and should not be taken into account in relation to a s.20C application, particularly where the leaseholders suffered no loss as a result, and that whether it is appropriate for a s.20C order to be made otherwise depends on the outcome of the application.

114. Additionally, a s.20C order will only take effect where the Respondent has incurred costs and where there is provision in the lease for the costs to be recovered.

115. In relation to the present application, there is no evidence that the Respondents have incurred any costs that would be recoverable. All correspondence appears to have been with the director. Furthermore, the Respondent has not suggested that any such costs have been incurred in any response to the application, neither has it objected to the order. It is also not clear that the Respondent is contending that there is provision in the lease for the costs to be recovered.

116. Whilst the Tribunal accepts acknowledges that the Applicants have not succeeded in full, and that a s.20C order is not to be made lightly (due to the difficulties that can be caused to a management company whose only asset is the freehold in question), the service charges have been substantially reduced by this Application. Additionally, in relation to matters where there hasn't been a reduction, the Applicants have indicated that they had no choice but to refer to them in the Application as the Respondents had not provided the documentary evidence in support to enable the Applicants to assess the charges without the need for the Application.

117. The Tribunal, therefore, considers that it is just an equitable for the section 20C order to be made.

APPEAL

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

Tribunal Member Jacobs MRICS