FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/30UH/LSC/2024/0188**
Property	**:**	**Flat 3, 7 Grove Street, Morecambe, Lancashire, LA4 4DP**
Applicant	**:**	**Sean Powell**
Respondent	**:**	**Otendal Property Investments Limited**
Respondent's representative	**:**	**Keystone Law**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A**
Tribunal Members	**:**	**Judge J.M.Going** **J.Faulkner FRICS**
Date of Inspection	**:**	**16 April 2025**
Date of Decision	**:**	**29 April 2025**

DECISION

THE DECISION

The Tribunal has determined that: –
(1) the service charges relating to 7 Grove Street for 2023 and 2024 are all reasonable and payable, and that the Respondent is due to pay a 1/3 share of such charges in accordance with the Lease; and
(2) if costs are incurred for the various repair, maintenance, and improvement works more particularly referred to in the Schedule of Planned Works (other than those relating to decoration of the interior walls of the flats, and repairs to their ceilings and fire doors) a service charge would be payable, subject to compliance with the statutory consultation requirements or the Tribunal having determined that those requirements can be dispensed with. The proportion of the service charge payable by the owner of Flat 3 is 1/3.

Preliminary and background matters

1. The Applicant ("Mr Powell") applied on 23 July 2024 to the First-Tier Tribunal Property Chamber (Residential Property) "the Tribunal" under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to whether the service charges demanded or to be demanded from the Respondent ("Otendal") in relation to the property ("Flat 3") are payable and/or reasonable.

2. Directions were issued on 20 January 2025 detailing a timetable for documents to be submitted, and how the parties should prepare. The Directions confirmed that the Tribunal considered it appropriate for the matter to be determined on the papers unless a hearing was requested but making clear the right of either party to seek an oral hearing at any time before the Tribunal made its determination. It was also confirmed that the Tribunal would consider the parties' submissions before deciding if an inspection of 7 Grove Street was required.

3. Neither party requested a hearing.

4. The papers submitted to Tribunal by Mr Powell included his statement of case, and later a response to Otendal's statement of case, together with copies of his registered freehold title to 7 Grove Street, the long-term lease of Flat 3 ("the Lease"), service charge accounts and demands, letters, emails, a Schedule of proposed works and estimates, certificates of posting, invoices, details of property insurance renewals and a property insurance valuation of 7 Grove Street.

5. The papers submitted by Otendal included a statement of case by Ulf Otendal and copies of its registered leasehold title, the Lease, the long leases of the other three flats at 7 Grove Street, correspondence, emails,

and invoices and details of insurance and other expenditure on properties owned by it.

6. The Tribunal decided that an inspection would be beneficial, and it was set down for the morning of 16 April 2025. The Tribunal members were met by Mr McNamara, on behalf of Mr Powell, and were then able to inspect the exterior of 7 Grove Street, its common parts, and the interiors of each of Flats 1, 2 and 4. There was no one available to allow access to Flat 3.

The Property and 7 Grove Street

7. 7 Grove Street is a 4-storey mid-terraced house constructed in or around the early 1900s which has subsequently been converted into 4 self-contained flats. It has a traditional pitched slate roof, which appears to be original, and a mixture of wooden and UPVC windows. The front elevation is faced in a combination of stonework and brick. The rear elevation is rendered. Some of the rainwater goods are in disrepair. There was evidence of penetrating damp in each of the flats inspected. There was also disrepair to parts of the ceilings in both Flats 1 and 4. There are small yard areas both to the front and the back with steps providing access to various parts of the building.

Chronology

8. The following matters are confirmed in the papers**.**

25 September 2003	Land Registry entries confirm that Mr Powell purchased a 999-year term lease of the basement flat (Flat 1) for £18,000.
23 December 2003	He purchased, by way of an assignment, the balance of a 999-year term leasehold interest in the ground floor flat (Flat 2) for £17,000.
24 January 2004	He purchased the freehold for £1.
24 March 2004	Melissa Powell purchased, by way of an assignment, the balance of a 999-year term leasehold interest in the second floor flat (Flat 4) for £16,570.
8 July 2021	Otendal purchased, by way of an assignment, the balance of a 999-year term leasehold interest in the first floor flat (Flat 3) for £40,000.
	The leases of Flats 2, 3, and 4 were dated in 1988 and 1989 and each refer to the 999-year term as beginning on 1 June 1988. The lease of Flat 1 was dated 25 September 2003 and its 999-year term began on the same day.
January 2022	M.Belcher MRICS of Vivid Surveyors Ltd prepared a Schedule of Works for “planned major works for the cyclical internal and external repairs, maintenance

	and redecoration works at 7 Grove Street", which was later revised.
June 2022	The first revision of the Schedule of Works was made.
20 July 2022	Mr Powell insured 7 Grove Steet with Covea Insurance plc for a year with the building's declared value being £963,964 and, the sum insured set at £1,301,352, for a premium of £1468.53.
	The service charge account for the whole building for the 6-month period from 1 January 2023 to 30 June 2023 referred to the second half of the insurance premium referred to above, £375 for the fire alarm, £700 for fortnightly fire alarm inspections and £7.05 miscellaneous (postage), totalling £1816.26.
20 July 2023	Mr Powell renewed the insurance with Covea for a further year in the same sums and at a premium of £1512.59.
October 2023	A second revision to Vivid Surveyors Schedule of Works was made. The schedule of works as so revised is hereinafter referred to as "the Schedule of Planned Works".
16 October 2023	A notice of intention to carry out works under section 20 of the 1985 Act was served by Mr Powell on Otendal. A covering letter refers to a previous notice issued on 14 February 2022 having been withdrawn.
	The service charge account for the whole building for the 6-month period from 1 July 2023 to 31 December 2023 referred to the first half of the insurance premium referred to above, £370 for fortnightly fire alarm tests, £850 for a survey and £4.70 miscellaneous, totalling £1981.00
	The service charge account for the whole building for the 6-month period from 1 January 2024 to 30 June 2024 referred to the second half of the insurance premium referred to above, £490 for the fire alarm testing, £300 for a Surveyor, and £435 for maintenance, totalling £1981.29.
13 January 2024	Care (Design & Enhance) Ltd provided a quotation to complete the planned works which with fees amounted to £241,603.
22 January 2024	Planned Reactive provided a quotation which with fees amounted to £88,548.10.
26 January 2024	A statement of estimates was served by Mr Powell on Otendal.
20 July 2024	Mr Powell insured 7 Grove Steet with Travellers Insurance Company Ltd, in the same sums as for the previous 2 years, at a premium of £1262.88.
	The service charge account for the whole building for the 6-month period from 1 July 2024 to 31 December 2024 referred to the first half of the insurance premium

	referred to above, £450 for the fire alarm testing, and £18.57 for electricity, totalling £1100.01.

The Lease

9. The First Schedule of the Lease defines Flat 3 as including "the ceiling and floors…. and the joist and beams to which the ceilings are attached (but not the joist or beams to which the floor are laid) and excludes the roof and foundation of the building and the boundary walls of the flat whether or not external walls of the building (except the interior surfaces the window frames and glass therein) and includes all systems tanks sewers drains channels pipes wires cables ducts and conduit used solely for the purpose of the flat but no others. All internal walls separating the flat from any other part of the building shall be party walls…"

10. Unfortunately, the official Land Registry copy of the Lease which has been supplied has various pages missing. Nevertheless, each of the 4 leases refer to the intention that they should be in "in identical terms (mutis mutandis)" and Clause 4 of each of the other 3 leases confirms covenants on the part of the lessee to "(b) keep the demised premises and all walls, party walls, sewers, drains, pipes, cables and wires in good and tenantable repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the other premises comprised in the building" and "(f) to keep the fire doors smoke detectors fire zone panels and security telephoning consisting in good repair and condition and in particular so they comply with current building and fire regulations".

11. Clause 3(b) of the Lease sets out the Lessee's covenant with the Lessor "to pay the Lessor without any deduction by way of further additional rent the Service Charge set out in the Fifth Schedule hereto for expenses incurred by the Lessor in the repair maintenance renewal and insurance of the building and provision of services therein and the other heads of expenditure specified in the Sixth Schedule hereto ("the service charge").

12. Clause 5(d) States "that so long as the Lessee shall not be in arrear in payment of the rent secondly hereinbefore reserved as set out in the Fifth Schedule hereto the Lessor will observe and perform the covenants set out in the Sixth Schedule hereto".

13. The following are extracts from the Fifth and Sixth Schedules to the Lease:-
"The Fifth Schedule
Service Charge
1.- IN this Schedule
(a) "Expenditure on Services" means the expenditure of the Lessor in complying with its obligations set out in the Sixth Schedule hereto
(b) "Service Charge" means one third of the Expenditure on Services

(c) "Interim Service Charge Instalment" means a payment on account of Service Charge of £50 per half year payable on 30th June and 31st December until service of the first Service Charge Statement and thereafter of one third of the Service Charge shown on the Service Charge Statement last served on the Lessee
(d) "Service Charge Statement" means an itemised statement of
(i) the expenditure on services for a year (or on the first occasion a shorter period) ending on 31st day of December
(ii) the amount of the service charge due in respect thereof (any apportionment necessary at the beginning or end of the term hereby granted shall be made on the assumption that expenditure on services is incurred at a constant daily rate) and
(iii) sums to be credited against that Service Charge being the interim service charge instalments paid by the Lessee for that year or period any service charge excess from the previous year or period and the annual rent payable hereunder accompanied by a certificate that in the opinion of the person preparing it the statement is a fair summary of the expenditure on services set out in a way which shows how it is or will be reflected in the Service Charge and is sufficiently supported by the accounts receipts and other documents that have been produced to him
(e) "Service Charge Deficit" means the amount by which the Service Charge shown on a Service Charge Statement exceeds any credit shown thereon
(f) "Service Charge Excess" means the amount by which any credits shown on a Charge Statement exceed the Service Charge shown thereon
2.— THE Lessor shall keep a detailed account of the expenditure on services and shall procure that a Service Charge Statement is prepared for every such year of period
3.—THE Lessor shall as soon as it received each Service Charge Statement serve a copy of it on the Lessee
4.—ON the 30th day of June and 31st day of December the Lessee shall pay to the Lessor an interim service charge installment –
5.—FORTHWITH upon service on him of the Service Charge Statement the Lessee shall pay to the Lessor any service charge deficit shown thereon
6.—FORTHWITH upon receipt of the final Service Charge Statement for the term hereby granted (howsoever determined) the Lessor shall pay to the Lessee any service charge excess shown thereon
.....
THE Sixth Schedule
Lessor's obligations subject to reimbursement
1._TO repair the Property and Building (except such parts thereof as the Lessee covenants in the Lease to repair) including the boundary walls and fences and PROVIDED THAT nothing herein contained shall prejudice the Lessor's rights to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Lessor by the negligence or other wrongful act or default of the Lessee or of such other person
2_
(a) at all times to keep the Building insured to the full reinstatement value thereof (including professional fees) in some Insurance Office of repute in the name of the Lessor with the interest of the Lessee and of other persons interested in the Building or part thereof noted on such policy against

comprehensive risks normally insured against in the case of premises of a similar nature
(b) to produce to the Lessee on demand the insurance policy effected pursuant to this Clause and the receipt for the last premium paid thereon or (at the option of the Lessor) evidence from the Insurers of the full terms of the policy and that the same is still in force
(c) to insure on such terms as the Lessor thinks fit against the liability of the Lessor for injury or damage to any person (whether or not a Lessee of part of the Property) entering upon the Property
(d) if the Building is destroyed or damaged by an insured risk that Lessor shall rebuild and reinstate it in accordance with the bye-laws regulations and planning or development schemes of the local planning authority for the time being affecting it and it is hereby agreed that any moneys received in respect of such insurance shall be applied so far as they extend in so rebuilding or reinstating the Building
3_TO pay to the appropriate authorities respectively responsible for collecting the same all the rates taxes and outgoings in respect of any part of the Building paid or becoming payable after the date hereof and whether or not of a novel nature
4—IN every fifth year of the term to paint or varnish with two coats at least of good quality paint or varnish the woodwork of the exterior of the Building previously painted or varnished and in every seventh year of the term hereby granted to paint with two coats at least of good quality paint or varnish and to paper or cover with suitable quality wallpaper and otherwise treat the hallway staircase and other parts of the interior of the Building used in common by the Lessees of more than one flat previously painted varnished papered or otherwise treated
5.—TO keep all parts of the Property used in common with the Lessees of more than one flat adequately cleaned and lighted
6.—TO keep accounts and records of all sums expended in complying with the obligations imposed by this Schedule
7.—IN the management of Property and the performance of the obligations of the Lessor hereunder to employ or retain the services of any employee agent consultant contractor engineer and professional adviser that the Lessor may reasonably require
8.—ALL the covenants and obligations of the Lessor contained in or arising under this Schedule are subject to and conditional upon the Lessee contributing and paying the Service Charge referred to in the preceding Schedule

Written submissions

14. Because the paperwork is on record it would be superfluous to attempt to set out its full detail or every submission and response in this decision.

15. The Tribunal has instead highlighted those issues which it found particularly relevant to, or which help explain, its decision-making.

16. Mr Powell confirmed that “The main reason I made this application was for planned Section 20 work, which is going to be costly and it was clear that I would not be able to agree with the Respondent the extent of

the work and the cost of the work. Prior to making the application I tried very hard to come to a consensus with the Respondent but it was clear that we will never be able to agree on anything. My efforts included sending my surveyor to meet the Respondent's surveyor. However, promptly after the meeting the Respondent cancelled the instruction of their surveyor and that was that.
On the 16 October 2023 I wrote to the Respondent and served on them a Notice of Intention under Section 20 which included a Schedule of Work…. On the 26 January 2024 I wrote again to the Respondent enclosing Notice of Estimates and the Tender Results and breakdown. The cost of the work including fees was ascertained to be £88,548.10. Unfortunately, due to the lengthy delays these costs will now have increased. Due to the contentious relationship between myself and the Respondent, I need to be certain that all my paperwork is in order and the costs are determined to be reasonable by the Tribunal before the work can be started. Unfortunately, 2 of my flats are uninhabitable and the third is getting close to being uninhabitable so these long long delays are proving to be very costly for me".

17. Otendal made various objections noting "Powell & Co Management Limited (Company Number 06030136) is the company engaged by the Applicant to deal with the service charge account and the general management of the Building. The Applicant is the Company Secretary and sole director of Powell & Co Management Limited". It confirmed "it had paid £239.06 to cover what it considers to be a reasonable service charge for the 6-month period from 1 January 2023 to 30 June 2023 following a demand for 25% of the expenditure for the whole building costed at £1816.26 plus a management fee of £168 inclusive of VAT i.e. £622.07. It explained and justified this on the basis that "The Respondent owns other properties in the same area and pays significantly less for insurance (in the region of £600 per annum for properties with four flats) and a management fee of £120 inclusive of VAT per annum per flat. It pays approximately £360 per annum in relation to fire alarm and lighting testing and £160 per annum per block of flats for testing and servicing the emergency lighting"…. "the Respondent also submits that the insurance premium is unreasonable and is based on an inflated market value for the Building of £963,964. The Respondent submits that the Applicant is significantly overcharging for the items in the service charge account for this period. With regard to the management fee, the Respondent further submits that the amount claimed is unreasonable and disproportionate to the level and quality of service provided in the management of the Building". It repeated its objections in respect of the charges for 2024 which Mr Powell had detailed when submitting his statement of case.

18. Otendal stated in relation to the proposed section 20 works "the Applicant claims that it has not been possible to reach consensus with the Respondent on the planned work on the Building. The Statement of Case fails to acknowledge that there has been detailed correspondence between the parties and their representatives nor does it set out the basis of the Respondent's objections to the amount that the Applicant appears to be claiming. Copies of the most recent email correspondence are attached…. The Respondent commissioned its own building survey report from Lea

Hough who inspected the property on 27 September 2023. At the time it was noted that two of the four flats were vacant. Flat 3 was occupied by a tenant of the Respondent. Lea Hough noted that repairs and re-covering works are required to the various roof areas which have elements of disrepair present and in the case of the main roof is allowing water ingress into the property. It also referred to defects resulting in dampness to the walls of the property, including cracked/defective render and pointing……The Respondent is prepared to pay 25% of the cost of any works that are not the direct result of the Applicant's failure to comply with the repairing covenant in the Sixth Schedule of the Lease. It has requested confirmation of the percentage being charged to the other leaseholders and has been advised that they are being charged in accordance with their leases".

19. In summary it stated "There is a defect in the leases of the flats in the Building in that the aggregate of the fixed percentages payable by the individual lessees exceeds 100% of the Expenditure on Services.
The Respondent objects to the amounts claimed by the Applicant in respect of the insurance premium payable for the Building and the amount of the management fee payable to a company wholly under the control of the Applicant. The other costs claimed are also in excess of what the Respondent pays for the other properties it owns in the area.
With regard to the section 20 works, the Respondent objects to the charges relating to the repair of the other flats in the Building which either fall within the repairing covenant of each lessee or are caused by the Applicant's breach of his repairing covenant in the Sixth Schedule of the Lease. The Respondent's agent has been advised that the first floor flat has been suffering from damp for approximately four years and that the tenant has had to use a dehumidifier to deal with it.
The Respondent reserves the right to bring a claim for damages against the Applicant for the cost of any part of the section 20 works that could have been avoided but for the failure of the Applicant to make good the defect at the time required by the repairing covenant in the Sixth Schedule of the Lease.
The Respondent also considers that there is such a wide discrepancy between the two estimates that the works should be put out to tender again and that a contractor with the appropriate experience and insurance cover should be appointed".

20. In Mr Powell's subsequent response he stated in relation to the proposed works "the Section 20 procedure does ascertain which contractor has offered the best cost….. I accept there is huge differential between the 2 quotes. However, we struggled to get quotes for the work. Ideally, we would have liked to obtain 3,4 or 5 quotes. Generally, in this current climate I struggle to get quotes for work across the whole of my portfolio….
My surveyor has taken a thorough look at the 2 quotes in the Notice of Estimates. If he was not satisfied we would not have served the Notice of Estimates…
I am aware that flat 3's contribution to the service charge in the lease is 33%. The Respondent suggests this should be amended to 25%. In principle I have no objection to this proposal if the Respondent makes a relevant application to the Tribunal…..

……The annual insurance for the building is based on the attached insurance valuation by Vivid Surveyors dated September 2021 …plus index linking by insurers….. Accordingly, in my opinion the insurance is reasonable.
The management fees for the building fall within the national average.
It is also my opinion that the fire alarm testing is reasonable….”

The relevant legislation

21. Section 27A of the 1985 Act provides that:-
“(1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to:-
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(2) Sub-section 1 applies whether or not any payment has been made…..
(3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to:-
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(4) No application under subsection (1) or (3) may be made in respect of matter which-
(a) has been agreed or admitted by the tenant,
……
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.”

22. Section 18 states that: –
“(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
(a) which is payable, directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.
(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
(3) For this purpose –
(a) “costs” includes overheads, and

(b) costs are relevant costs in relation to the service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or an earlier or later period."

23. Section 19 of the 1985 Act confirms that :-
"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.
(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable, is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise."

24. Section 20 states: –
"(1) Where this Section applies to any qualifying works… the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –
(a) complied with in relation to the works…, or
(b) dispensed with in relation to the works… by (or on appeal from) the appropriate Tribunal
…"

25. The Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") set out the detailed consultation requirements ("the consultation requirements"). Regulation 6 sets the cap on the relevant contributions at £250, if the consultation requirements are not complied with by a landlord or dispensed with by the Tribunal.

26. Reference must be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to go through a 4-stage process: –

- Stage 1: Notice of intention to do the works

Written notice of its intention to carry out qualifying works must be given to each Flat Owner and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting Flat Owners to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

The Landlord must seek estimates for the works, including from a nominee identified by any Flat Owners or the association.

- Stage 3: Notices about estimates

The Landlord must supply Flat Owners with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by Flat Owners and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

The Landlord must give written notice to the Flat Owners within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, unless, either the chosen contractor submitted the lowest estimate, or is the Flat Owners' nominee.

27. Section 20ZA(1) states that: –
"Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works… the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

The Tribunal's Reasons and Conclusions

28. The Tribunal began with a general review of the papers to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber Rules 2013, as amended, ("the 2013 Rules") permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

29. Neither party has requested a hearing, and the Tribunal was satisfied that this matter is suitable to be determined without one. It has been assisted by the clarity of the written submissions.

30. The Tribunal adopted a sequential approach to its decision-making. Its first task being to review the scope of its jurisdiction, before considering whether the disputed costs were contractually payable under the Lease, and finally whether there were any statutory limitations on the recoverability of the costs, whether as a consequence of Sections 19 or 20 of the 1985 Act, or otherwise.

Jurisdiction

31. Mr Powell's original application requested, inter alia, a determination of the service charges payable for 2023. Subsequently, he requested that it be extended to include the service charges for 2024. Because Otendal has helpfully very clearly stated its case, and because its objections to the charges for 2024 replicate those made in relation to the 2023 charges, the Tribunal has concluded that there will be no prejudice in allowing the application to incorporate both years' charges. It is satisfied that it has all it needs to allow conclusions to be properly reached in respect of the issues to be determined. It

is also conscious that its overriding objective to deal with cases fairly and justly as set out in rule 3 of the 2013 Rules, includes- "seeking flexibility in the proceedings" and "avoiding delay, so far is compatible with proper consideration of the issues".

32. There are, however, limits to the extent of what the Tribunal can or should decide in response to an application made under section 27A.

33. Section 27A(1)gives leaseholders (and others) the right to apply to the Tribunal for a determination whether a service charge is payable and, if it is, as to the person by whom it is payable, the amount which is payable, and the date at which it is payable. That entitlement is extended by section 27A(3) to cover charges in respect of future expenditure. No such application may be made in respect of a matter which has already been agreed or admitted by the leaseholder, referred to arbitration, or been the subject of determination by a court or an arbitrator (section 27A(4)).

34. The Tribunal is conscious that both parties may not always have fully appreciated the boundaries to that jurisdiction. Both have, explicitly or impliedly, asked the Tribunal to stray beyond those boundaries. Mr Powell has asked for confirmation that the consultation requirements have been fully met, and that the costs of future works will be considered to be reasonable. Otendal has asked the Tribunal to sanction a variation to its lease. It has also raised the possibility of claims for damages or set-off. In each instance, and as will be more fully explained, the Tribunal declines to make full or final determinations on such matters in response to the present application.

The contractual provisions of the Lease

35. In this context, the Tribunal particularly considered 2 questions. Firstly, what is the percentage of the service charges payable by Otendal? Secondly, which items fall to be paid for as part of the service charges, and which do not?

What is the share of the service charges due from Otendal?

36. Otendal has correctly identified that the service charge percentages payable by the 4 leaseholders when taken together add up more than 100%, submitting that this constitutes a defect and, that "the applicant should only be entitled charge each lessee 25% of the expenditure on services". In support, it refers to the case of *Rossman v Crown Estate Commissioners [2015] L&TR 31.*

37. The Tribunal readily acknowledges that where the service charge contributions contractually due from the individual leaseholders do not add up to 100% there is a potential ground for an application for an order to vary the leases under Part IV of the Landlord and Tenant Act 1987 ("the 1987 Act"). Section 35(4) of the 1987 Act specifically states "… a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—….. (c) the aggregate of the amounts that would, in any particular case, be payable…. would either exceed or be less

than the whole of any such expenditure".

38. However, the Tribunal does not agree that any such application, even if successful, would necessarily and inevitably lead to each of the leases being varied so that each leaseholder is charged an equal 25% share. Such an outcome is but one of various plausible options and cannot be assumed to be automatic.

39. It would also be wrong, as part of this application, to attempt to prejudge the result of any variation application (being a separate application where the Tribunal would need to establish that the statutory preconditions, both procedural and as to the necessary grounds, had been satisfied, before it could proceed to decide if it should exercise its discretion and limited powers, which would involve considerations of potential prejudice to each of the leaseholders and possible compensation).

40. The Tribunal has carefully considered the case of *Rossmon*. As Otendal correctly identified, that concerned a different and separate jurisdiction relating to the exercise of the statutory right to the acquire an extended lease. There are clear distinctions between a variation of an existing lease, and the provisions attaching to a new lease. Consequently, the Tribunal finds that the facts and circumstances of *Rossmon* are distinguishable from those of the present case. (Significantly, it also notes that the case confirmed that Mr Rossman with others had been unsuccessful in an earlier variation application under section 35 of the 1987 Act, and that his appeal relating to the terms of his new lease was restricted to just that and did not result in any parity with other comparable flat owners).

41. *Rossmon* also leaves untouched the principle that the original parties to a long-term lease have contractual freedom to specify who is to pay for what. It is of note that Judge Cooke in *London Borough of Camden v Morath [2019] UKUT 193 (LC) at [16*] when referring to section 35 of the 1987 Act commented that it "does not enable the Tribunal to vary a lease on the basis that it imposes unequal burdens, or is expensive or inconvenient. It would be very strange if it did, in view of the law's general resistance to the temptation to interfere in or improve contractual arrangements freely made".

42. Of course, it has always been, and remains, possible for a landlord and tenant to vary the provisions of the lease by agreement. However, as in this case, where long-term leases are involved, the Law of Property (Miscellaneous Provisions) Act 1989 dictates that for any agreed variation to be legally binding the terms must be documented and the document incorporating the terms must be signed by or on behalf of each party to the contract.

43. The Tribunal finds that the acts of the parties fall short of a legally binding agreement to vary the lease of Flat 3. The email exchanges exhibited by Otendal lay bare the lack of agreement between the parties. They also allude to the additional matters of Otendal having made offers to purchase Mr Powell's interest in the building or to sell its own. There is

evidence of conditional offers made by Mr Powell to reduce the percentage charged from a third to a quarter in relation to the costs demanded for particular periods, and a willingness to do the same in relation to the costs of the proposed major works, but it is clear that such offers have not been agreed because of Otendal's continuing objections to the amounts demanded.

44. Without either a variation order or a properly documented variation agreement, the Tribunal's task is restricted to interpreting the contractual terms of the Lease of Flat 3. Its provisions are unambiguous, and there is nothing to suggest that they were not freely agreed by Otendal when buying the flat.

45. Clause 1(b) of the Fifth Schedule to the Lease clearly states ""Service Charge" means one third of the Expenditure on Services".

46. The Tribunal finds therefore that the service charge contribution due from Otendal is one third.

Which items does the Lease specify can be included within the service charges, and which not?

47. The Sixth Schedule to the Lease allows for the following categories of costs, amongst others, to be included within the service charges:-
for the insurance of the building (because of clause 2);
for the testing and maintenance of fire alarm to be tested and maintained (clause 7); and
for management (clause 7),
and this has not been disputed.

48. What has been challenged is whether all the items referred to in the Schedule of Planned Works can properly be included within the service charges. The Tribunal found that not all can.

49. The drafting of the Lease may leave much to be desired, but the repairing responsibility for each individual flat, as it is specifically defined in the Lease, is clearly the responsibility of the leaseholder. Each flat is defined as including its ceiling and floors and as "excluding the roof and foundation of the building and the boundary walls of the flat whether or not external walls of the building (except the interior surfaces the window frames and glass therein)…". Clause 4(f) of each lease confirms the responsibility of the leaseholder to keep fire doors in good repair and condition and to comply with current building and fire regulations.

50. It follows from this analysis that the internal decoration of the flats, repairs to their ceilings and any necessary upgrade of their fire doors are all the responsibility of the individual leaseholder, and the costs of such work cannot be included in the service charges.

51. The Tribunal next considered the statutory limitations on the recoverability of those costs which can be included within the service charges.

The limitations set out in section 19 of the 1985 Act

52. Section 19 imposes a general requirement of reasonableness in relation to service charge expenditure and a cap or limit on the amounts payable.

53. The questions to be asked in deciding whether the limitations apply are whether relevant costs have been, or will be, reasonably incurred, which inevitably involves consideration of the amount of those costs, and whether the relevant works and/or services are of a reasonable standard.

54. The following principles, derived from decided cases, were helpful to the Tribunal in making its decision as to what is reasonable: –

- The Tribunal must take into account all relevant circumstances as they exist at the date of the decision in a broad, common sense way giving weight as it thinks right to various factors in the situation in order to determine whether a charge is reasonable. *London Borough of Havering v MacDonald (2012) 3 E.G.L.R. 49.*
- Whether costs are reasonably incurred is not simply a question of the landlord's decision-making process. It is also a question of outcome. The requirement that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give a landlord a licence to charge a figure that is out of line with the market norm. The fact that the landlord may have adopted appropriate procedures in incurring the costs does not mean that such costs are reasonably incurred if they are in excess of the appropriate market rate. *Forcelux v Sweetman (2001) 2 E.G.L.R. 173.*
- If works are not of a reasonable standard, only the costs which could have been charged for the substandard works will be recoverable. *Yorkbrook Investments Ltd v Batten(1986) 18 H.L.R. 25 CA*
- There is no presumption for or against the reasonableness of the standard…and the decision will be made on all the evidence made available. *Havering v MacDonald*
- Unless it is asserted that management arrangements are a mere "sham" i.e. an arrangement which disguises the true relationship or agreement between the parties, there is nothing in principle objectionable to a landlord employing a company he owns or is involved in to provides services *Country Trade Limited v Marcus Noakes and Others [2011] UKUT 407*
- In the absence of a contractual price for management, the usual principles for determining the reasonableness of the relevant costs apply. If a managing agent's services are found to have been provided in accordance with the RICS Service Charge Residential Code 3rd Edition ("the RICS Code") then they will be found to be of a reasonable standard.
- In section 19 what is under scrutiny is whether the actual incurring of the cost is reasonable and that must depend on whether the landlord's response, at the point in time when the decision is made to act, is a

reasonable one. The question of reasonableness must be considered by reference to the circumstances when the costs are incurred and not by reference to how the need for such costs arose. *Continental Property Ventures v. White (2006) 1 E.G.L.R. 85.*

55. With such principles in mind, the Tribunal considered each of the categories where costs have been challenged.

The costs of insuring the building

56. The Lease clearly provides for the whole property to be insured by Mr Powell for its full reinstatement value, and for the costs to be included and paid for through the service charge.

57. The Tribunal found no evidence that the insurance was arranged otherwise than with due diligence, in the normal course of business, and in accordance with the terms of the Lease. Mr Powell engaged a broker throughout and based the declared value of the building on the advice of a chartered surveyor specifically tasked to value it for insurance purposes, and which valuation was sensibly later adjusted to account for inflation. After two years Mr Powell was happy to change insurers to reduce the premium.

58. It is difficult to understand why he would have any desire to overpay because, with Melissa Powell, he pays most of the premium personally. Nevertheless, it was not necessary for him to show that the premiums were the cheapest that could be obtained for the costs to have been reasonably incurred, as is helpfully explained by the Upper Tribunal in *Cos Services v Nicholson [2017] UKUT 382 (LC).*

59. Otendal's evidence of its own insurance cover was found to be of little, if any, assistance to the task in hand. Such insurance appeared to cover its interest in respect of multiple properties. It did not provide any "like with like" comparison to properly reflect risks being undertaken pursuant to the Landlord's covenants in the Lease.

60. Otendal submitted "that the insurance premium is unreasonable and is based on an inflated *market* value for the building". The Tribunal found no evidence for that and was somewhat concerned that the submission appeared to indicate a misunderstanding of requirements of both the Lease and building insurances generally, where to guard against the perils of underinsurance it is essential that a building is properly insured for its full reinstatement value. It was immediately apparent to the Tribunal that the market value of 7 Grove Street, built more than a hundred years ago, is very different and bears no comparison to its reinstatement value.

61. The Tribunal is content, based on the evidence before it, having inspected 7 Grove Street, and using its own knowledge and experience, that the building insurance premiums as hitherto included within the service charges are reasonable and payable in full.

The charges relating to servicing and testing the fire alarm

62. The Tribunal also found all these charges to be reasonable and payable as part of the service charges.

63. The cost for each fortnightly test visit of £20 was found to be reasonable. Otendal's reference to its managing agent's monthly charge of £30 for a different property, without being clear whether that was more than one test each month, did nothing to persuade the Tribunal otherwise. It was also noted that Otendal's managing agent were at the same time charging a separate and additional "management commission" based on 10% of the monthly rent.

64. The Tribunal also found the frequency of the testing to be reasonable. It is aware that British Standards advise weekly testing of fire alarms for commercial buildings, and that similar regimes are adopted in many flat developments.

Powell and Co's management charges

65. Otendal has pointed out, which is not disputed, that Mr Powell is the company secretary and sole director of Powell and Co being the company engaged by him to manage 7 Grove Street and the service charges. Nevertheless, and as confirmed in *Country Trade Limited,* the relationship between Mr Powell and Powell and Co is, of itself, irrelevant to the question of whether management charges are reasonable and payable.

66. Otendal submits that they are not, because the charges are too expensive, and the service has not been of a reasonable standard. The Tribunal does not agree with the first assertion and finds no compelling evidence for the second.

67. The fees charged to Otendal ranged from £140 plus VAT for the first 6 monthly accounting period to £180 plus VAT for the last. Otendal has stated that it is charged £120 (presumably per annum) for a comparable local property. Mr Powell in response stated says that Powell and Co's fees "fall within the national average" and "there is a lot of intense management from my office due to the lack of cooperation from the respondent".

68. The RICS code sets out in paragraphs 3.3, 3.4 and 3.5 its recommended practice in respect of fees and charges, and the services expected to be included within a basic fixed fee. It also lists as examples of items outside the scope of the basic fee and where one would expect additional charges for "

- preparing statutory notices and dealing with consultations where qualifying works … are proposed
- preparing specifications, obtaining tenders and supervising substantial repairs of works; and
- attending courts under tribunal proceedings."

69. There is no set benchmark for management fees, but as the RICS code states the level "must be reasonable for the task involved". If Powell and Co

had been solely involved with work expected to be included within a basic annual fee, the Tribunal would have found the fees charged to be within, albeit at the top end, of the likely range of reasonable management fees within the region.

70. However, and particularly because of the additional work with which it has been involved, and with no suggestion of a separate and additional fee, the Tribunal had no hesitation in concluding that the management fees charged for both 2023 and 2024 were both reasonable and payable.

The proposed major works

71. Charges for future expenditure fall under the jurisdiction of section 27A(3) of the 1985 Act which inevitably is more limited in scope than section 27A(1).

72. Section 27A(3) asks "whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management… a service charge would be payable…".

73. Axiomatically, the Tribunal cannot predetermine whether future works will be completed to a reasonable standard. But, nor does a determination under section 27A(3) preclude the making of a further application under section 27A(1) when works have been completed, if their standard is then at issue.

74. Section 27A(3) is framed in conditional terms about whether a particular service charge would be payable if demanded. What the Tribunal can do, as it has done in this case, is determine whether the terms of the Lease allow specific costs to be included in the service charges. As another example of what is possible, and if it is already clear, it can also determine if a statutory limitation or cap on the amount that can be charged applies.

75. After inspecting 7 Grove Street and having studied the Schedule of Planned Works carefully and in detail, the Tribunal concluded that all the repair, maintenance, and improvement works specified within it are reasonable. (As established in *Continental Property Ventures* why works are necessary is not relevant to the separate question of whether it is reasonable for costs to be incurred).

76. Having found the specification reasonable and because of its previous analysis of the Lease provisions, the Tribunal was able to determine that, if costs are incurred in relation to the works specified in the Schedule of Planned Works, all would be payable as part of the service charges, apart from those relating to decoration of the interior walls of the flats and repairs to their ceilings and fire doors (being the costs of the works more specifically detailed in sections 2.11.A,B,&C and 2.13, and the decoration works referred to in sections 2.09E and 2.10G (but not the other works referred to in sections 2.09E and 2.10G, which can be included in the service charges)).

77. Of course, having identified that there are specific costs which cannot be charged through the service charges does not mean that the works to which they relate cannot be undertaken at the same time as the other works, provided that the relevant leaseholder agrees to and pays for them.

Compliance with the consultation requirements

78. The next question addressed by the Tribunal was whether there were any limitations on the recoverability of those costs which it has identified are payable as part of the service charges.

79. Mr Powell has said "that I need to be certain that all my paperwork is in order and the costs are determined to be reasonable by the Tribunal before the work can be started". However, the Tribunal cannot give him the assurance that he has sought in exactly the terms that he has asked for.

80. The provisions of Section 20 of the 1985 Act, coupled with the Regulations, are clear; if the detailed consultation requirements are not complied with or dispensed with by the Tribunal following an application under section 20ZA, a landlord cannot recover more than £250 from an individual leaseholder in respect of a set of qualifying works.

81. *Collingwood v Carillon House [2021] UKUT 246 (LC)* confirms that the consultation requirements are "both strict and sequential. There is no room in the clear wording of the provisions for flexibility in their interpretation, and no legal precedent for a flexible interpretation. They are anything but woolly". There is no doctrine of "substantial compliance" and it is not open for the Tribunal to find the landlord has "done its best".

82. In this case, the Tribunal can say, from the evidence before it, that the Stage 1 and 3 notices appear to have been compliant, there is no evidence, or suggestion, of Otendal within the allotted time nominating a contractor for Mr Powell to seek an estimate from, and there is evidence of his consideration of Otendal's observations. In short, there is nothing to suggest any procedural non-compliance.

83. Mr Powell has, however, raised the problem with the passage of time since the submission of estimates in January 2024 and that the costs then quoted will almost certainly have increased.

84. In that context, it is relevant to reference the Upper Tribunal's decision in *Jastrzembski v Westminster City Council*, *[2013] UKUT 0284 (LC)* where it rejected a submission that there is no time limit between the date of service of the notice of intention and the carrying out of works. It held that, while there is no specified time limit set out in the Regulations, there were useful indications that the relevant time periods for the work to be undertaken is "months rather than years". It appears to support the proposition that a delay between the date of service of the notice of intention and the carrying out of works could amount to a breach of the consultation requirements.

Otendal's reservation of a right to bring claims for damages

85. Such a right has yet to be exercised, and the evidence presently before the Tribunal is insufficient to make any meaningful determination in respect of its claims to be entitled to set off amounts from the service charges.

86. The Tribunal agrees that any such claims, if they are to be pursued, should most properly be dealt with by the County Court.

Conclusions

87. Drawing the Tribunal's various conclusions and findings together: –

- management fees and one third of the service charges for 7 Grove Street for 2023 and 2024 are due and payable from Otendal to Mr Powell on the dates and manner specified in the Lease. The Tribunal considered carefully whether offers made by Mr Powell to accept a reduced proportion of one quarter of the service charges as demanded might be binding, before concluding that they were not because of Otendal's continuing objections to the amounts demanded.
- if costs are incurred for the various repair, maintenance, and improvement works more particularly referred to in the Schedule of Planned Works (other than those relating to decoration of the interior walls of the flats and repairs to their ceilings and fire doors) a service charge would be payable, subject to compliance with the consultation requirements or the Tribunal having determined that they can be dispensed with. The proportion payable by the leaseholder of Flat 3 would be one third, unless in the meantime the terms of Lease are varied either by an agreement satisfying the requirements of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 or by the Tribunal in response to an appropriate application.