



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **MAN/30DH/LSC/2019/0103 FVH**

**Property** : **80 Lune Square Damside Street Lancaster  
LA1 1AH**

**Applicant** : **Mr Robert Jones**

**Respondent** : **Lune Square (Lancaster) RTM Company**

**Type of Application** : **Landlord and Tenant Act 1985 (the “1985 Act”)  
– section 27A, and section 20C; Commonhold  
and Leasehold Reform Act 2002 (the “2002  
Act”) – Sch 11 para 5**

**Tribunal Members** : **Judge WL Brown  
Mr IR Harris, MBE FRICS**

**Date of Decision** : **7 March 2022**

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**DECISION**

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- (i) Regarding reasonableness of service charges and administration charges at issue the Tribunal’s determinations appear in paragraphs 15 – 37 of this Decision.
- (ii) No Order under S20(C)
- (iii) No order as to costs

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## REASONS

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### **Hearing**

A hearing of this matter took place on 27 May 2021. This was a remote hearing by video which was not objected to by the parties. With the consent of the parties, the form of the hearing was by video using the Tribunal video platform (a Full Video Hearing – FVH). A face to face hearing was not held because it was not practicable due to the COVID-19 pandemic and all relevant issues could be determined in a remote hearing. The documents that we were referred to are in core bundles of 1007 pages, the contents of which we have recorded. (The parties were content with the process).

The Applicant attended.

The Respondent was represented by Mr Alan Threadgold, director of the Respondent. Counsel for the Respondent was also in attendance, Ms L Webster, but her instruction was limited to matters concerning the application under Section 20C of the Landlord and Tenant Act 1985 and to advise the Respondent on any points of law arising during the hearing. Also attending were Mr Philip Baddeley, director of the Respondent, Mr Steven Thompson, Regional Manager of Warwick Estates Property Management Limited (“Warwick Estates” the managing agent of the development in which the Property is located) and Ms Laura Simpson, Property Manager of Warwick Estates.

The parties were directed at conclusion of the hearing to provide additional information to the Tribunal, which subsequently completed its deliberations.

### **Background**

1. The Tribunal received an application dated 29 November 2019 from the Applicant for a determination as to whether service charges in respect of the Property are payable and/or reasonable. The application concerned the service charge years ending 31 January 2017 – 2021 (but respectively known in the parties’ document for the hearing as 2016, 2017, 2018, 2019 and 2020). The determination regarding service charges is made under Section 27A of 1985 Act.
2. Directions were made by the Tribunal on 23 January 2020, 17 March 2021 and further directions were issued following the hearing.
3. There is a substantial history in this matter and the Tribunal will not here record all of the detail, but will focus on the key points and in particular those relevant to its determinations. Helpfully, the parties prepared the schedule appearing at Annex A to this decision (a “Scott Schedule”) detailing their respective positions on the matters under dispute. Therefore the Tribunal will not repeat those representations, but may refer to additional information presented to it at the hearing and subsequently (understood by the Tribunal to have been copied to the other party) relevant to its determinations.

4. The Tribunal was informed at the hearing that the Applicant no longer was requesting an order under Section 20C of the Act and therefore no such order was made.

5. The Applicant ceased to own the Property on 18 December 2020.

### **The Lease**

6. There was no dispute about interpretation of the lease content. The lease of the Property of which the Applicant became owner in 2012 is dated 12 August 2004 and is for a term of 999 years from 1 January 2004 at an annual ground rent of £150. The Applicant ceased to own the Property in December 2020.

7. It was not in dispute between the parties that the Respondent has the contractual responsibility under the lease to fulfil the covenants in the Sixth Schedule Part 1 for undertaking Works and Services and that the Applicant is liable under clause 2 and paragraph 16 of the Fourth Schedule of the lease to pay service charges arising from compliance with those obligations. Other relevant provisions will be referred to below.

8. The relevant proportion of annual service charges attributable and payable by the Applicant is recorded in the lease as 1.25% (excluding any charges for car parking areas, which does not directly matters before the Tribunal).

### **The Dispute**

8. The Applicant's claim relating to service charge years 2017, 2018, 2019 and 2020 is that the costs of insurance of the building in which the Property is located are unreasonable in amount. He also complained about some sundry related matters.

### **The Law**

9. Section 19 of the 1985 Act states

Limitation of service charges: reasonableness

*(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 for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

10. Section 27A of the 1985 Act states

## Liability to pay service charges: jurisdiction

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

- a. the person by whom it is payable,*
- b. the person to whom it is payable,*
- c. the amount which is payable*
- d. the date at or by which it is payable, and*
- e. the manner in which it is payable.*

(2) *Subsection (1) applies whether or not any payment has been made.*

(3) *An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -*

- a. the person by whom it would be payable,*
- b. the person to whom it would be payable,*
- c. the amount which would be payable,*
- d. the date at or by which it would be payable, and*
- e. the manner in which it would be payable.*

11. Also of relevance is Schedule 11 of the 2002 Act which states

Meaning of “administration charge”.

*1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—*

*(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,*

*(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,*

*(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or*

*(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

.....

*(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—*

*(a) specified in his lease, nor*

*(b) calculated in accordance with a formula specified in his lease.*

Reasonableness of administration charges.

*2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable*

.....

Liability to pay administration charges

5 (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

## **Background**

12. The Property is a 2 bedroom apartment in a development (the “Development” of flats numbered 1 – 84 Lune Square Damside Street Lancaster LA1 1AH).

13. The Tribunal learned that a management agreement was entered into between the Respondent and Warwick Estates dated 1 February 2019 whereby Warwick Estates is responsible for managing the Development.

## **The Tribunal’s Findings and Determinations**

### **Service charge year 2017**

**Serial 1** (by reference to the key on the Scott Schedule)

14. The Tribunal was first satisfied that the Applicant’s lease provides in principle for recovery of the charges at issue, in accordance with clause 16 of the Fourth Schedule, which states the leaseholder’s obligation is “*To pay the Management Company [now the Respondent] the Service Charge in accordance with the provisions of the Seventh Schedule to this lease.*” Service Charge is defined by reference to the allocated percentage (see paragraph 7) which in turn is relevant to the “Service costs” which are defined as money spent in respect of matters identified in the Sixth Schedule Part Two. Those charges are for standard-type of expenditure for maintenance of a communal residential building and the preamble to Part Two specifies that they “*...are all the expenditure, liabilities and overheads.....*” for types of work then specified.

15. The Applicant alleged that the sums he highlighted were payable by the Respondent because of mismanagement by a former managing agent (which the Tribunal was informed at the hearing has ceased to trade). However, he did not present evidence to refute the Respondent’s position that all sums had been duly payable. The Tribunal found that the parties were in agreement that payments for liabilities incurred in 2016 should have been better organised, but we were presented with no persuasive evidence that they did not relate to items which were within the service charge as contemplated by the lease, for which the Applicant is liable. In consequence we found no basis for there to be a refund to the Applicant in the sum claimed (£162) or otherwise relevant to this element of the Applicant’s case.

### **Serial 2**

16. The Tribunal was informed by the Respondent that its best understanding of how there appears to have been a shortfall on an insurance pay-out to leaseholders

from a flood affecting apartments in the Development, of which the Applicant is one – in the sum of £37.50 – was due to the former managing having slightly insufficient insurance cover for the event, or an insurance excess on claims. The Applicant indicated that he challenged the former managing agent about it in mid-2018. For the Tribunal the amount was small, but as it was not a service charge item the Applicant's complaint fell outside of the Tribunal's jurisdiction.

### **Block Buildings Insurance**

#### **Service charge years 2017, 2018, 2019**

#### **Serial 1 (in each year)**

17. The Respondent has undertaken the obligation in the Sixth Schedule Part 1 (paragraph 6) for insuring the building in which the Property is located. That provision states *"To insure at all times under a policy or policies providing indemnity to the Landlord and the Management Company and their respective lessees and mortgagees during the Term to their full reinstatement value the Buildings....."* There then follows a list of insurable risks, concluding with *".....and such other risks (if any) as the Management Company shall from time to time think fit in such insurance office of repute in such sum as the Management Company shall from time to time think fit....."*

18. At the hearing it became clear that adequate information was not within the Tribunal bundle to assist the Tribunal consider the Applicant's concerns about insurance costs.

19. The Tribunal received a statement, which the Tribunal directed to be provided, dated 11 June 2021 of behalf of the Respondent through Steven Thompson of Warwick Estates as appears in paragraph "16" of Annex "B".

20. In a response dated 25 June 2021 the Applicant commented regarding whether commission had been earned on placing of insurance *"Whilst brokers may be entitled to charge a commission, it must be declared and be deemed reasonable in the context of their likely administrative costs. Commission can account for up to 40% of premium cost, which quite often will be shared with Other Parties. Whilst Steve Thompson claims to have no knowledge of such arrangements, as stated earlier his knowledge of what occurred in 2017 to 2020 is limited. Mr Threadgold's tribunal declaration of not being aware of any commission arrangements perhaps suggests he has not explored the matter."* In oral evidence Mr Thompson gave evidence which the Tribunal found as cogent, in the absence of contrary information, that no commission had been paid to the Respondent from placing of insurance.

On 1 July 2021 the Tribunal raised queries in writing of the Respondent. Those queries and the replies received by email dated 9 July 2021 from Ms Simpson are as follows:

1. Please identify the premium for the insurance year 2019/20 –

Answer:

*The insurance premium for the year 2019/20 was £49,838.76 inclusive of IPT and terrorism cover. The two invoices are attached; the second invoice relates to the premium increase arising from the 2019 insurance revaluation.*

*For information the insurance premium for the year 2020/21 was £59,566.38 inclusive of IPT. This included separate insurance for the flood excess on the main policy. The two invoices are attached.*

*For information the insurance premium for the year 2021/22 is £ 55,015.90 inclusive of IPT. This includes separate insurance for the flood excess on the main policy. The two invoices are attached.*

*Lune Square is in a known high flood risk area; see the attached flood risk assessment which is an extract from the gov.uk web site.*

*The foregoing costs from different brokers and insurers evidences the fact that, after the initial premium increase in 2017, consequential on the December 2015 flood, all up building insurance costs for Lune Square since 2018 have consistently been in the region of £50k to £60k. We believe a key driver in our insurance costs is the flood risk, see above. The Lune Square RTM Company believes it has done all that reasonably could be expected of it to mitigate the impact of flooding, and thereby minimise insurance costs.*

*Given that the Respondent is a Right To Manage Company, the effect of the Applicant's claim is to transfer part of the Applicant's service charge costs onto the other Leaseholders of Lune Square. That is unfair on the other Leaseholders*

2. Was there insurance cover for terrorism in 2017/18, 2018/19, 2019/20?

*Answer – I can confirm there was terrorism cover for each of the years, please see attached policies confirming this.*

3. Details of any additional premiums paid to those appearing on the documents lately submitted.

*Answer – I can confirm there was no additional payments made.*

Responses to Questions 4 and 5 were by reference to documents provided. The questions were:

4. Please provide an accountancy break-down apportionment of the premiums over the insurance years straddling the service charge year to identify how the insurance sum is made up in each service charge account, including for the 2016 service charge year.

This query was clarified by the Tribunal, after request from the Respondent, to:

The Tribunal requests that the sums allocated to insurance in each year be broken down to show the respective amounts and from which Insurer invoice, because the insurance term is different to the service charge year

5. Please provide a further copy of the pages showing the valuation sum in the report of Earl Kendrick Associates dated 26 June 2019 (paragraphs identified 5.0 and 6.0)

21. The Tribunal had sympathy with the Applicant's submissions regarding information about buildings insurance in the three years at issue, due to confusion – not least because the insurance year, which appears to begin on 1 June, is different to the service charge year, commencing 1 February, therefore there is no simple one piece or evidence of the charge incurred within any particular service charge year. We accepted that some confusion in presentation arose from the apportionment of charge in consequence. However, we also found some peculiarities in the insurance cover. We identified no documents proving cover being in place between 19 March 2017 and 31 May 2017 – although that period is outside those at issue. There was a major flood in December 2015 causing multiple claims and then “resilience” works at the block so as to mitigate premium increase. There was a revaluation of the block in June 2019 by Earl Kendrick Associates Limited and this resulted in mid-term adjustment of the premium. There was mis-invoicing by the insurance broker concerning the 1 June 2018 renewal concerning terrorism insurance.

22. The Tribunal had to consider whether the extent of cover was reasonable and whether the consequent charge was reasonable. On the latter, understandably, the Applicant presented no evidence of alternative potential premiums and while the Respondent provided evidence of premiums, there was no consistent detailed information of the sums attributable to each element of cover.

23. The Tribunal was able to find, on a balance of probabilities that the insurance premiums were as follows:

Service charge year to 31 January 2017 - premium was £23,371.00

Service charge year to 31 January 18 - the premium was £57,113.40

Service charge year to 31 January 2019 - the premium was £41,326.42.

24. Regarding the extent of cover, the Tribunal found that there were two items which the Tribunal can describe as extraordinary. Firstly, concerning landlord loss of rental income protection. We found this was in place for service charge year to 31 January 2018. The Respondent pointed to its wide discretion on what should be covered (see paragraph 17) and that it took advice from a broker on renewal cover. Mr Thompson indicated that the cover was for replacement occupation costs of leaseholders and sub-tenants forced out due to an insured risk. However, the Tribunal was not directed to supporting evidence to that effect. The only rent in the lease is the fixed annual ground rent and we were provided with no evidence that the insurance cover at issue was protection for default by a leaseholder in paying that sum. On a balance of probabilities we understood it to be cover for loss of rent for investment landlords. We found that this protection was beneficial potentially only for those leaseholders who let out their apartment – presumably permitting a claim if a



residential sub-tenant defaulted on rent payment. Therefore it was protection for an unquantified number of leaseholders and was not cover reasonably necessary for the owner occupiers. We found that it was a charge unreasonably incurred, but we were unable to identify from the evidence presented to us the amount of contribution to the annual insurance cost was attributable to that element of cover.

25. The second anomaly in the extent of cover was Employer's Liability, in place for service charge year ending 31 January 2019 (and again for 2020). There was no evidence that the Respondent had employees and therefore it was not explained to the Tribunal's satisfaction that this was reasonably necessary cover.

26. Given the difficulties and proportionality in forensically identifying and examining the annual premium the Tribunal determined that it should take a broad-brush approach in assessment. Having found anomalies and certainly one element of cover that we found unreasonably incurred regarding the loss of rental income we determined that a reduction of 10% of the buildings insurance element of the service charge in service charge years 2017, 2018 and 2019 was appropriate to reflect reasonableness in the amount charged to the Applicant.

### **Service charge year 2018**

#### **Serial 2 Installation of Dry Risers**

#### **Serial 3 Installation of automatic opening smoke vents**

27. The Applicant raised an overall concern that advance Service Charge demands (expressly permitted by the lease, as is usual for management of a residential block of flats) significantly exceeded actual costs in the years 2017 to 2019 which led to a cash surplus which is reflected in 2020 Service charge bank account balances in excess of £140,000. He represented generally that the surplus should be distributed to leaseholders and specifically regarding these items. The Tribunal found that the lease makes no provision for dealing with surpluses, unlike shortfalls which are recoverable from leaseholders (paragraph 4.5 of the Seventh Schedule). The Respondent provided compelling evidence in the form of invoices for expenditure and we determined that the charges were payable by the Applicant. We found the Respondent's evidence about its use of surplus funds accruing to the service charge account to be credible. We record that no evidence was presented to suggest that the expenditures involved in these items were unreasonably incurred or as to amount. In consequence no refunds are due to the Applicant in the amount claimed, or otherwise referable to this matter.

### **Service charge years 2018 and 2019 Risk Management**

#### **2018 Serial 4 / 2019 Serial 3**

28. The Tribunal found no evidence presented to it that these item of expense were explicable in any other way than as set out by the Respondent in the Scott Schedule, that no consultation rights were engaged – for the reasons explained by the Respondent in the Scott Schedule - and nor was there evidence that the sums involved were unreasonable as to amount. In consequence the Tribunal determined that these sums were payable by the Applicant accordingly, within service charges

### **Service charge year 2019**

#### **Serial 2 Planned works**

29. At the hearing the Applicant explained that this element of his case was superseded by the following matters and therefore the Tribunal was not requested to make any determination on serial 2 for 2019.

### **Serial 2 (i) – (viii) – Irregularities in the accounts**

30. With permission of the Tribunal the Respondent provided its responses to these items in a statement dated 11 June 2021 by Ms S Thompson of Warwick Estates, to which the Applicant replied on 25 June 2021. The Tribunal now will reproduce the content of those documents in full so the parties can be sure that all of their evidence and submissions on these points of dispute have been taken into account. The former is within the attached Annex “B” (paragraph 17 therein). The Applicant’s subsequent comments were:

*“2 (i) – To substantiate the sum of £120 included in Audit & account fee costs the Respondent has now produced a copy of a Warwick Estates invoice for £130 in Exhibit ST-2 (1). Clearly there is an arithmetic anomaly, and the description of “Preparation of External pack” suggests it is for accounting administration, which surely should be part of the basic scope of service related to the Management fee.*

*2 (ii) – The Applicant’s query related to a difference between the sum of £50909 included in the Service charge accounts for 2019 and the supporting invoices presented on 8th October 2020 when accounts were reviewed by the Applicant. Steve Thompson’s Witness statement has confirmed that actual payments made in the year were £49838.76 which is consistent with the invoices provided on 8th October. Steve Thompson confuses matters by referring to acknowledgement of the previous year’s duplication of Terrorism cover charges which is referred to on p534 of the Hearing bundle and now appears to be conceded by the Respondent.*

*2 (iii) – Unsubstantiated electrical testing costs (£600). This issue now appears to be conceded by the Respondent. Adjustment in the accounts for 2020 is of no benefit to me as I incurred the cost inappropriately in 2019.*

*2 (iv) – Anomaly in supporting invoices for J M Maintenance (landscaping). The information provided on pages 302-312 of the Hearing bundle and the retracted bank statements found under Exhibit ST-2 (2) support my observation that there is an arithmetic anomaly in the 2019 Service charge accounts of £869. Invoices add up to £1374.89 and Service charge accounts state £2244.*

*2 (v) – Viewed collectively the invoices supporting major/minor/planned maintenance are £7574 less than the sums included in the Service charge accounts. The explanation from the Respondent included in the Scott schedule presented on p538 of the Tribunal bundle refers to a Winning Building Services invoice for £11395 which was included in batch 12 of the invoices provided in October 2020 (p349 of Hearing bundle) and incorporated against Minor repairs costs. Reference is also made to a Winning Building Services invoice for £15948 which was included in batch 19 of the invoices provided in October 2020 (p392 of Hearing bundle) and incorporated against Planned Works expenditure. Reference is then made to costs of £11220, the build-up of which comprises Winning Building Services invoice for £6300 (p547 of Hearing bundle) and Winning Building Services invoice for £2760 (p541 of*

Hearing bundle) – both invoices were included in batch 12 of the invoices provided in October 2020 (p351 & p353 of Hearing bundle) and incorporated against Minor repairs. A balancing figure of £2160 is referred to in the Scott schedule (p538 of Hearing bundle) but there remains no clear definition of which invoices the balancing figure refers to. There are numerous invoices in batch 12 for signage etc which are included in pages 314 to 353 of the Hearing bundle and will probably in one permutation or another equate to the £2160 balancing figure. Suffice to say they are all accounted for under Minor repairs.

Under Exhibit ST (2) the Respondent has now referred to four further invoices. They do not appear to account for the £7574 in-balance referred to above. One of these invoices from All Power Wash Solutions was included in Batch 12 of the invoices presented for review in October 2020 (p315 of Hearing bundle) and was incorporated against Minor repairs. There are two Winning Building Services invoices and an invoice from Warrior Doors which have not previously been disclosed. It is unclear why these invoices have been provided at this late stage, but worthy of note that are dated and paid after the 2019 year-end and in all probability will be included in the 2020 accounts which to the best of my knowledge are not yet issued. Now that my interest in the property has been sold, I will not be issued with 2020 accounts.

2 (vii) – Arithmetic anomaly relating to lift insurance costs (£380). Steve Thompson's Witness statement seems to confuse two accounting years and refers to the "red herring" of accruals.

I fail to understand the relevance of accruals – the Service charge year end is 31st January, accounts are issued some 6 months or more later, therefore any invoices appertaining to the service charge accounts should be available for accounts reconciliation and certainly when reviewed by the Applicant some 9 months after the year end.

Lift insurance costs for 2018 were stated as £920 with no supporting invoice and in 2019 £992.34 with supporting invoice included in batch 13 (p355 of Hearing bundle). It is therefore fair to assume that the invoice sums referred to in Steve Thompson's Witness statement (ie £992.34 and £902.12 Exhibit ST-2 (4 A&B) reflect the actual costs for these two years. The Service charge accounts include £920 (2018) and £1372 (2019). The Service charge accounts have therefore been overstated by £397.54 over the two years in question.

2 (viii) – Unsubstantiated Warwick Estate fees of £1190.50. Copies of Warwick Estates invoices are included in Exhibit ST-2 (5 A/B & C). There is no explanation why these invoices were not available in October 2020. In fact, it is only because of the Directions of the Tribunal that my queries raised on 12th October 2020 (ref p432 of Hearing bundle) have now been responded to. The charge of £686.50 relates to the uplift in Warwick Estates fees (26% referred to earlier) which in fact is applicable to the 2020 Service charge year. The other invoice for £504 is for printing and postage which I would have expected to be provided within the agreed Management fee."

31. The Tribunal found and determined as follows, following the numbering in the Scott Schedule. Where the Tribunal has determined reasonableness in amount, it should be noted that there was no contrary persuasive evidence found:

2 (i) On a balance of probabilities the invoice produced is for the service provided and is evidence of the expenditure, which is a service charge item within Sixth Schedule Part 2, paragraph 5 ("the cost of keeping the books and records of the expenditure.....")

The Tribunal determined the amount involved is reasonably incurred and reasonable in amount.

(ii) The Respondent has accepted that the Applicant has identified an error and has provided an explanation how the mistake will make good. However, as the Applicant no longer is a leaseholder, able to benefit from a surplus as described in Mr Thompson's statement (see Annex B), the Tribunal determined that a refund is due to the Applicant of his share of the surplus against this item. The Respondent should present a calculation of the sum to the Applicant, including the apportionment and make a repayment.

(iii) The Respondent has accepted that the Applicant has identified an error and has provided an explanation and identified no loss to the Applicant, which the Tribunal accepted as appropriate.

(iv) The Tribunal was satisfied from the invoices produced in evidence that the expenditure had been incurred and was a service charge item within Sixth Schedule Part 2, paragraph 1 (the cost of provision of the services set out in Part 2 of that Schedule, which included maintenance of external areas (para 2) and common parts (para 4)). The Tribunal determined the amounts involved are reasonably incurred and reasonable in amount.

(v) Having considered the documentary evidence and the parties' representations the Tribunal found that the Respondent's explanation was persuasive and supported by the invoices referred to in Mr Thompson's statement (see Annex B). The Tribunal determined the amounts involved are reasonably incurred and reasonable in amount.

(vi) Dealt with in paragraph 20.

(vii) The Applicant has identified confusion caused by the accounting process of accrual of charges. However, the Tribunal has received the Respondent's explanation within Mr Thompson's statement (see Annex B) and it found no persuasive evidence to contradict that explanation. In consequence it found no loss to the Applicant.

(viii) The Tribunal was satisfied from the invoices produced in evidence that the expenditure had been incurred and was a service charge item within Sixth Schedule Part 2, paragraph 3 (the cost of managing agents). The Tribunal determined the amount involved is reasonably incurred and reasonable in amount.

### **Service charge year 2020 - Administration fees.**

32. The Application did not request the Tribunal to consider charges which may amount to "administration fees" under Schedule 11 of the 2002 Act. However, the Applicant clearly presented his grievances about being charged personally (i.e. not as a service charge cost) for the amounts referred to below and the Respondent responded. Therefore the Tribunal was satisfied that the parties had respectively adequately presented complaint and reply positions and that it should make determinations regarding these supplementary charges.

### **Serial 1 – debt referral fees**

33. Clause 16 of the Fourth Schedule of the lease records the leaseholder's obligation to pay service charge in accordance with the Seventh Schedule. However, we were not directed to nor found a lease provision permitting the Respondent to render charges against a leaseholder who fails to pay service charge demands issued in accordance with the lease obligation to do so. Without such a contractual right under the lease the sum involved is not an administration charge in accordance with paragraph 1(1) Schedule 11 of the 2002 Act and therefore the Tribunal has no jurisdiction to determine in paragraph 5 of that schedule.

## **Serial 2 – sale fees**

34. The Tribunal found that the Respondent is able to render charges arising from a sale of an apartment against a leaseholder in accordance with clause 17.5 of the lease. This states that upon a sale of the premises a transfer fee is payable within 7 days of completion, expressed to be “.....0.15% of the gross sale price or open market value.....” and provision follows for arbitration where the amount involved cannot be agreed. The Tribunal found that in accordance with the exclusion from jurisdiction for determination under the 2002 Act Schedule 11 paragraph 1(3)(b), because there is a formula recorded the Tribunal has no legal basis under that Act to make a determination of reasonableness.

35. We noted that paragraph 14 of part 2 of the Sixth Schedule makes provision for the cost of responding to enquiries about the service charge or management to be service costs – i.e. recoverable under the service charge. However, we understood this sum to have been charged to the Applicant personally and therefore only potentially an administration fee. The Applicant did not dispute the charge of £195 paid in accordance with clause 17.5 when he sold the Property. However, he was aggrieved at having to pay £420 for legal responses to be made during the conveyancing process.

36. The Tribunal found that the sum of £420 was within the definition of an administration fee in paragraph 1(1)(a) and (b) of Schedule 11 –providing consent to the sale / provision of information – and was a variable administration charge in accordance with sub paragraph (3). Therefore the Tribunal is able to consider the question of reasonableness of the charge in accordance with paragraph 2 of that Schedule.

37. The Respondent indicated the sum was £350 plus VAT of £70 and that the amount was in line with the “market norm”. No breakdown of the work involved was provided. We found that the explanation of who undertook the particular work to be inconsistent. In the Scott Schedule it is stated to be Warwick Estates. In oral evidence Mr Thompson stated that it was by a “Solicitors enquiry team”. The Applicant presented no evidence of what a reasonable cost should be for the work involved, related to his conveyancing process. Nevertheless, using its own knowledge of legal charges and of the sort of information that may be involved in providing replies to legal enquiries of a landlord in conveyancing process, the Tribunal found that 2 hours of work would be reasonable and that £175 per hour, exclusive of VAT was also a reasonable hourly charging rate for such work. Therefore we determined that the sum of £350 plus VAT was a reasonable one.

## **As to Section 20C and Costs**

38. The Applicant withdrew his application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years. No corresponding order was made by the Tribunal.

39. There was no application before the Tribunal concerning fees and it made no order as to costs.

**Tribunal Judge Leslie Brown.**