FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case reference	:	CHI/00HN/LSC/2023/0081
County Court claim	:	J54YX420
Property	:	Flat 1, Rockstead, 18 West Overcliff Drive, Bournemouth, BH4 8AA
Applicant	:	Rockstead Holding Company Limited
Representative	:	-----
Respondents	:	Vincent Chent-Wei Teo
Representative	:	---
Type of application	:	Transferred Proceedings from County Court in relation to Service Charges
Tribunal member(s)	:	Judge J Dobson Mr A Crawford MRICS Ms T Wong
Date of Hearing	:	10th March 2025
Date of Decision	:	11th July 2025

DECISION

Summary of the Decision of the Tribunal

1. **The Respondent is not liable to contribute to the costs of any managing agents, accountants and other agents employed by the Applicant (although is liable to pay the costs of contractors engaged in maintenance, repair, upkeep, renewal, cleansing and decoration).**

2. **The Respondent is liable to contribute 20% to costs related to the main building.**

3. **The service charges demanded are payable save those in relation to agent fees.**

4. **The Tribunal is unable to determine the effect on service charges claimed by the Applicant in the proceedings and provide the exact sum of the service charges payable without clarification of the agent fees year by year for the years in question.**

5. **Directions have been given for the provision of clear evidence to enable a specific determination to be made.**

6. **The accounting effect of these determinations is a matter for the County Court.**

7. **Directions have also been given in respect of any applications as to costs.**

Background

8. The Applicant is the head leaseholder of Rockstead, 18 West Overcliff Drive Bournemouth BH4 BAA ("the Estate). The Respondent is the sub- lessee of Flat 1 Rockstead, 18 West Overcliff Drive, Bournemouth, BH4 8AA ("the Property"), having become so on 26th September 2002 when his title was registered. Flat 1 has an area of roof and other elements exclusive to parts of it but other parts within the remainder the residential building ("the Building").

9. There are four other flats within the Estate situated in the remainder of the Building. The Building is Victorian or Edwardian (different documents describe it as one or other). There is a freehold title and the freeholder of the property is Rockstead Freehold Company Limited, but it played no part in the proceedings. There is also a further dwelling known as Flat 6, which is a separate coach house adjoining the Building. The freehold to Flat 6 has been sold and registered under a separate title, although it previously formed part of the Estate and that has some significance.

10. The Applicant is a lessee- owned company. The Applicant employs a managing agent, House and Son, to manage the Estate on a day- to- day basis. The Respondent is a quantity surveyor by profession.

Procedural History

11. The procedural history of the proceedings is lengthy and involved and it is not necessary to set all of that out at length. The more significant elements are referred to below.

12. In May 2022, the Applicant filed a claim in the County Court in respect of sums said to be due from the Respondent lessee by way of unpaid service charge, interest and costs. The stated value of the claim on the Claim Form was £36,828.72 in respect of service charges for the period 24th June 2016 to 5th May 2021, excluding the Court fee paid and excluding legal costs on issue. An appendix set out the relevant service charge demands dates and amounts [54- 55]. The Respondent filed a Defence dated 9th February 2023 [131- 161] raising several arguments, including matters related to a Deed of Variation (see further below), the scope of his obligations and various other points only some of which now require determination by the Tribunal. He also pursued counterclaims.

13. In due course, there was a County Court trial. In a judgment [120- 124] of which a transcript was available, the Deputy District Judge determined all of the service charges demanded to be payable. There was also a transcript of the hearing itself [146- 279]. That was followed by an appeal, which was allowed by HHJ Mitchell by Order dated 19th July 2024.

14. The other notable features of the 19th July Order are, firstly, that the Tribunal was directed only to determine those items within its jurisdiction with any remaining issues to be referred back to the County Court. The Order places a clear limit to the matters to be addressed in these proceedings, such that the Decision (and notwithstanding the Court claim number shown above) is only in relation to CHI/00HN/LSC/2023/0081, that is to say the matters within the jurisdiction of the Tribunal. An issue raised by the Respondent that he had not been repaid sums as ordered by the Court is a matter for the Court and was not one for the Tribunal.

15. The second matter is that HHJ Mitchell's order directed the Claimant to provide all documentary evidence relied upon in support of the service charges over a period from 2008.

16. At a case management hearing, following the transfer of the file to the Tribunal, it was indicated that the Applicant took over management in 2015. The Applicant explained that it did not have complete documentation prior to 2015, although some and the Respondent said he had located such documents himself. The Respondent suggested in the CMH that other tenants had not paid during those earlier years and

that service charges charged to him had been higher than they ought to make up for such shortfalls. The Respondent accepted that he had nevertheless paid the service charges as demanded up to and including 2015. However, it was identified that the claim relates to sums from 2016 and it is therefore those service charges which fall within the Court proceedings and require to be determined by the Tribunal- hence no determinations are made in respect of earlier service charges.

17. Directions were given for the preparation of the parties' cases in the Tribunal proceedings, including provision of hearing bundle. In the event, however, some 3 bundles were produced for the final hearing- a Tribunal bundle of 1356 pages, the Court core trial bundle of 1402 pages and a Court supplementary trial bundle of 1505 pages. The length was increased by duplication of documents within as well as between bundles.

18. Whilst the Tribunal makes it clear that they have read various parts of the bundles as considered proportionate and useful, the sheer volume of the three bundles precluded reading those in full. The Tribunal did consider those documents to which the parties specifically referred, but most documents in the bundles were not mentioned at all. Where the Tribunal had not considered the documents in advance and no reason was identified for it to do so at the hearing, the Tribunal did not consider those documents. Even so, many of the of the documents which were read are not referred to in detail, or in many instances at all, in this Decision, it being unnecessary to so refer. Where the Tribunal does not refer to pages or documents in this Decision to which the parties did refer, it should not be mistakenly assumed that they have been ignored or left out of account.

19. Insofar as reference is made to any specific pages from the Tribunal bundle that is done by numbers in square brackets [ ], as occurs in the preceding paragraphs where appropriate, and with reference to PDF bundle page- numbering. References to the Court core bundle are done as [C] and to the Court supplementary bundle as [S].

20. The Decision aims to focus on the key issues and does not cover every last factual detail. This case suffers from the twin difficulties of the long history and the sheer quantity of documents, leaving aside the number of challenges brought. Findings have not been made about matters irrelevant to any of the determinations required. Findings of fact are made on the balance of probabilities.

The Lease

21. It is considered necessary to set out provisions of the Lease at some length and more so than would ordinarily be required in light to the issues in this case. A copy of the original lease was provided within the bundle [18- 44).

22. That lease (an underlease) is dated 25th May 2000. The parties to this dispute were in neither instance the original contracting parties. Those were as the landlord Rene Van Gytenbeek and as the lessee Monaliesa Van Gytenbeek. The term of the lease was 99 years less 3 days from 25th May 2000. The date of the lease post- dates by several years the dates of the leases of the four other flats remaining within the Estate. The lease was varied by a Deed of Variation dated 11th December 2017 [45-52] and that variation was agreed to take effect from 2nd March 2015. The parties to the variation are Rene Van Gytenbeek and the Respondent.

23. Save where there is a need to specifically distinguish between the original lease and the varied lease, the two documents are referred to collectively as "the Lease". The Lease refers to what is termed here as the Estate as being "the Premises" and what is termed here as the Property as being "the Demised Premises" and so any clauses quoted below need to be read with that in mind. Aside from particular matters set out below, the Lease requires the parties to comply with the usual sorts of obligations.

24. A significant variation provided for in the Deed of Variation is that the original lease provided for the Respondent to contribute 1/6th of the rent and of the costs incurred by the Applicant (clause 2) and recoverable under the terms of the Lease by way of service charges: the variation increased that to 20%. The Tribunal perceives, because it is the logical explanation, that reflected the sale of Flat 6 and its freehold, such that its liability to contribute to the Building and the Estate ended. Hence there were five flats in the remaining Estate as compared to six originally.

25. The Property is identified in 3. within the Definitions and Interpretation in the First Schedule as "more particularly described in the Second Schedule". In that Second Schedule the Property is said to include a specific garden area. There is nothing particularly notable about what is included in the Property. The external surfaces of doors, frames and window frames are expressly excluded plus the main timbers and joists of the Building and all walls (except the plaster surfaces expressly included). So too, most fixtures and fittings.

26. By paragraph 3. of Part I the Fifth Schedule ("The Lessee's Covenants") to the Lease (and not stated to be rent), and after covenants to pay rent and towards insurance, the Respondent agrees:

> "To pay one- sixth [as it then was] of any other cost to the Lessor (whether on account of the cost to be incurred or incurred directly or by payment to the Superior Lessor) of the maintenance repair upkeep renewal decoration and services of the Premises shared by the Demised Property and the rest of the Premises to include (but without prejudice to the generality of the foregoing) the maintenance and repair of the roof and foundations of the Premises".

27. By paragraph 3. of Part II of the same Schedule ("The Lessee's Further Covenants"), the Respondent is required:

> "To pay on demand to the Lessor one- sixth [as it then was] as referred to in Clause 2 of Part I of the Fifth Schedule of the cost incurred by the Lessor for the work procured in repairing cleansing maintaining and renewing any part or parts of the Premises the support shelter protection or use of which is common to the Demised Property and the Other Units and in particular those matters set out in Clause 5 of the Sixth Schedule thereto".
>
> (By the term "Other Units", reference is made to the flats other than the "Demised Premises" i.e., the Property.)

28. As discussed below, the Lands Tribunal has held in relation to the lease of another flat that reference to "Clause 5" was in error and the intention was to refer to clause/paragraph 6 of the Sixth Schedule to the original lease.

29. It will be identified that there are two separate clauses providing matters to which the Respondent shall contribute and that the wording in each of those clauses differs from that in the other. On a very basic level, in Part II the cost must have been incurred by the Applicant, whereas Part I includes, but is not limited to, cost to be incurred. Further in Part I reference is made to "shared by the Demised Property and the rest of the Premises" with regard to those elements it seeks to include, whereas Part II refers to "the support shelter protection or use of which is common to the Demised Property and the Other Units". Part II is, as identified above, said to be one of various "Further" covenants. As to whether those differences have an effect relevant to these proceedings is discussed below.

30. There was an original paragraph related to maintenance and similar obligations of the Applicant, paragraph 6. That read as follows:

> "The Lessor shall maintain or procure the maintenance repair, redecoration and renewal in a good and substantial manner of a) The structure of the Premises and in particular the foundations main walls roof drains gutter and rainwater pipes of the Premises b) The gas and water pipes drains and electric cables and wires used in common with the owners and Lessees of the Other Units and enforce the covenants against the owners Lessees or occupiers of the Other Units"

31. However, the original paragraph 6 was replaced in its entirety by a new paragraph inserted by the Deed of Variation, which extended the scope- see c) to e) below inclusive. The new paragraph is a covenant by the Applicant to:

> "6.1 Maintain, repair, redecorate and renew (or procure the same in a good and substantial manner:-
>
> a) The structure of the Premises and in particular the foundations main walls roof drains gutter and rainwater pipes of the Premises;

b) The gas and water pipes drains and electric cables and wires in under or upon the Premises used by the Lessees in Common with the owners and Lessees of the Other Units and enforce the covenants against the owners, Lessees or occupiers of the Other Units.;
c) The timbers joists and beams of the ceiling and roofs and the slabs of the floors in the Premises;
d) The conduits in under or upon the Premises not exclusively serving the Demised Premises;
e) All those parts of the Premises not exclusively enjoyed by leases licence or otherwise by the Lessee or the occupiers of the Other Units including the gardens and grounds at the Premises"

32. Hence, the repairing cleansing maintaining and renewing in paragraph 3. of Part II is in particular in relation to (not limited to) those matters.

33. The Respondent is required by clause 2. (in addition to basic rent) to pay as additional rent 20% (originally 1/6th) of the Applicant's expenditure on insurance for the Estate. That is said to be payable, although not the most clearly expressed, "on such of the usual quarter days as shall happen next after the expenditure of such sum by the Landlord". Paragraph 2. of the Fifth Schedule requires payment within 14 days of a demand, apparently making different provision. However, in the normal course and as a legal principle, the first provision is to be adopted, so sums are payable on the next quarter day after payment is requested.

34. Unusually, the Lease provides at paragraph 5. of the Third Schedule a right for the original lessee of the Property and any other person authorised by the lessor to "rebuild reconstruct modify or alter the Demised Premises or any part thereof or to erect a new building or buildings on any part of the Demised Premises to such height elevation extent or otherwise as the said Monaliesa Van Gytenbeek shall think fit". (As to what any other authorised person can do is thereby indicated to be limited to what Ms Gytenbeek might so think fit and additionally, the clause says "and not her [Ms Gytenbeek's] successors in title", seemingly unless such successors become authorised persons, which is at first blush a little odd). Alterations are not relevant to the dispute in themselves, but the Respondent contended this was one of a number of features demonstrating a difference between the Property and other flats on the Estate.

35. Overall, the Lease is far from the simplest to follow and the lack of consistency of wording makes construction more complex than it could have been. As explained further below, the Lease is also not in the same terms as the leases of Flats 2 to 5 inclusive.

<u>The Construction of Leases</u>

36. It is well- established law that the Leases are to be construed applying the basic principles of construction of such leases, and where the construction of a lease is not different from the construction of another contractual document, as set out by the Supreme Court in *Arnold v*

Britton [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

37. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

38. Given that there are specific matters to construe, the Tribunal carefully bears in mind the above when undertaking that exercise.

Previous decisions related to the Property or others at the Estate

39. There have been two previous decisions related to the Estate which are of significance in this case and the Tribunal considers it merits referring to those relatively fully given their impact.

40. In 2017, the Applicant, together with the lessees of three of the flats in the Building applied to the Tribunal seeking a variation of the Lease and the leases of the other dwellings within the Estate. The Respondent and the lessees of another flat were the Respondents. The Tribunal decision ("the 2017 Decision") was included within the bundle [126-144].

41. The application was made pursuant to section 35 of the Landlord and Tenant Act 1987 and so on the basis that the Lease failed to make

satisfactory provision for matters in respect of which variation was sought. There were three themes.

42. Firstly, variation in the share of the costs payable by the Respondent as service charges was sought and it will be identified from the above reference to variation of that share that the application was granted to that extent. No more need be said about that.

43. Secondly, the Applicant and the applicant lessees originally asked for what was described as a modern service charge provision but by the hearing had varied that request to a request for provision for a reserve fund and to allow the recovery of various fees. The Tribunal determined that the Lease did not fail to already make satisfactory provision for a reserve fund. The Tribunal did so on the basis that the Respondent was required by the existing provisions of the Lease to make payments on account of costs to be incurred by the Applicant. Hence there was no need for any specific clause referring to a reserve fund as the existing provisions permitted appropriate payments to one to be requested from the Respondent.

44. Thirdly, the Applicant and the applicant lessees sought provision for the recovery of the fees of managing agents, accountants and other agents of the Applicant. The Tribunal also determined that the Lease did not fail to make satisfactory provision for that. The Tribunal determined that there was no ability to recover such fees but concluded that was not because of anything unsatisfactory. In contrast, the Lease had not sought to make such a provision at all. The inability of the Applicant to recover such fees was clear enough. Hence, the Respondent had not been and would not be obliged to contribute towards such costs if the Applicant incurred them.

45. Rather earlier, back in 2010, the Lands Tribunal heard an appeal from the Tribunal in relation to the service charges payable by the lessees of Flat 2 and Flat 6- *Lardy v Van Gytenbeek* [2010] UKUT 347 (LC) [460-475]. That hearing was dealt with by George Barlett KC, the then President of the Lands Tribunal, followed by a judgment ("the 2010 Decision"). In an unusual twist, the Respondent (that is to be clear Mr Teo, the Respondent in these proceedings) was the representative of the then- head lessor, Mr Van Gytenbeek, in those proceedings. Whereas it has been identified above that Flat 6 was the coach house, Flat 2 is situated on the second floor of the Building. Issues for determination in the proceedings included, firstly, the liability of Flat 2 to contribute to works to the roof above only the Property, so Mr Teo's flat, or any works there may be to Flat 6 and secondly, the liability of Flat 6 to contribute to works to the Building.

46. The judgment identifies that the Flat, so Flat 1, was the subject of the underlease to Monaliesa Van Gytenbeek by 2001 (understandably given the original lease in 2000). It says that there was no underlease then of Flat 6 and further that by May 2005, the underlease was held by the appellants in that case but a few days later a deed of licence was

executed which described Monaliesa Van Gytenbeek as the Flat 6 lessee. That issue appears not to have required further investigation, but there is at least no identification of a title sitting between that of Rene Van Gytenbeek and the appellant. As to whether the intention had been to grant and underlease to Monaliesa Van Gytenbeek and matters changed or whatever else occurred is entirely unclear. The relevant point is that it is not apparent that Ms Van Gytenbeek held the leases of both the Property and Flat 6.

47. The Leasehold Valuation Tribunal, the predecessor of this Tribunal, had recorded that it found the interpretation of the leases difficult and did not consider the scheme in place suitable. The Lands Tribunal considered the share of service costs for the Estate payable in respect of each lease. The appellant lessees argued that the lessee of Flat 2 was not liable for the cost of works to Flat 1 or maintenance to Flat 6 and Flat 6 was not liable for the cost of works to the Building. In a judgment on which the Respondent specifically relies about one of the issues for determination addressed below, the Lands Tribunal held that the leases of dwellings within the Estate were in similar but not identical terms. The Lands Tribunal usefully was in receipt of the leases of all six flats.

48. It was held that the paragraph 3s of Parts I and II of the Fifth Schedule to the particular Flat 6 lease were unsatisfactorily drafted. The Flat 2 (and it was identified Flat 5) lease contained additional wording to others of the leases in both Parts I and II. In Part I, that read after the words in the equivalent clause of this Lease "and in particular the matters set out in Clause 6 of the Sixth Schedule hereto". In Part II, the wording is identified to be the same as the Lease, so the last part clause reads (again) "and in particular those matters set out in Clause [paragraph] 5 of the Sixth Schedule thereto" (but where it was determined what was intended was reference to clause 6- paragraph 6 as termed in this Decision). The liability of those Flats 2 and 5 was, or at least potentially was, greater than the other flats. The lease of Flat 6 contained the additional wording in Part II but not in Part I.

49. It was concluded that as to Flat 6 (paragraph 38), "that the tenants ..... are not required to contribute to the costs of maintaining, for instance, the staircase and landings in the main house. The reason for that is that those parts of the premises are not shared by Flat 6 (within paragraph 1 of Part I) or used in common by Flat 6 and the other units (within paragraph 3 of Part II) nor is the maintenance of them, one of the matters set out in a paragraph 6 of Schedule 6 to the lease of Flat 6". Notably, Flat 6 was not contained in the Building and so its physical position was identifiably different to that of the other flats, including the Property, (and the Sixth Schedule of the Lease now makes different provision to how it did at the time).

50. However, Flat 6 was liable to share in the costs of maintenance of the roof and foundations of the Building because the word "to include" specifically demonstrated intention for that. Further and more significantly for this case, it was held that the words starting "and [in particular....]" towards the end of paragraph 3 of Part II "have the effect of

extending what has gone before". Hence, Flat 6 was liable for 1/6th of the obligations set out in the Sixth Schedule. The fact that the wording in Part II was "for no obvious reason" worded differently, did not impact because, firstly, "There is no justification, however, for cutting down the effect of paragraph 3 in Part I by reference to this provision". So, the fact that Part II did not refer to maintenance and repair of the roof and foundations did not detract from the liability under Part I. Secondly, the reference to matters in Clause 6 [paragraph 5] of the Sixth Schedule as it then was, extended the liability to all matters covered by that clause/ paragraph.

51. It was identified that the Lease (i.e. to Flat 1) also contained that additional wording ("and in particular .....") in Part II referring to the Sixth Schedule, but not in Part I, so the same as Flat 6 but not as Flat 2. The lease of Flat 3 was the same in that regard, hence that reference to "and in particular" in Part II was the most common combination. The lease of Flat 4 did not contain the additional wording in either paragraph.

52. It was identified that Flat 1 (and the 4 other flats than Flat 1 remaining on the Estate) would be liable to pay to the cost of maintaining and repairing the roof (and logically the foundations) to the Building. It was also suggested- that word is used because plainly the liability of Flat 4 was not before the Lands Chamber for a decision- that insofar as references to the Sixth Schedule included elements that are not shared by the other flats, Flat 4 would not be liable for the cost of works to those elements because that lease did not include the words starting "and in particular" quoted above. It was then said, "and the same is arguably the case for Flats 1 and 3" (paragraph 32), although that comment was not expanded on. The liability of Flat 1 was similarly not before the Lands Chamber.

53. Overall, the result was stated to be (paragraph 39) that the lessees of the six flats, as there then were, were liable to pay the whole of what is now the Applicant's cost of fulfilling its obligations but, importantly, with three exceptions to all lessees being liable for the same costs. One related to a shared garden area- enjoyed by 3 flats and so the costs were shared between those 3 only. The second was the limit to the liability of Flat 6. The third was the limit for Flat 4 and potentially Flat 1 (the Property) and Flat 3 also sent out above- although it is re- iterated that no determination was made in respect of the Property.

54. The Lands Tribunal essentially determined where relevant to its judgment, or otherwise considered where it was not directly relevant, that the flats share the cost of elements which they use or benefit from unless liability for the cost of matters in the Sixth Schedule extends that.

The Hearing

55. The attendees appeared in person at Havant Justice Centre.

56. Mr Ian Brown and Mr Gary Hood represented the Applicant company. They are both directors of the Applicant. The Respondent Mr Teo represented himself. He was accompanied by Mrs Teo.

57. Oral evidence was received from Mr Brown for the Applicant and Mr Teo the Respondent. There was additionally a written witness statement from Mr Brown [1274- 1347] and one from Mr Teo [392-419]. The Tribunal asked various questions of witnesses seeking clarification of matters advanced. Mr Brown briefly, and with a shorter addition from Mr Hood, and Mr Teo gave oral closing submissions.

58. The Tribunal is grateful to the above for their assistance with this case.

59. Some clarification was sought by the Tribunal as to the issues in dispute. The Respondent explained that there are 26 invoices during the relevant period but 6 of those total approximately £30,000 in on account payments sought. Nevertheless, he said did not take particular issue with the individual items of expenditure and agreed that the Tribunal did not need to consider the other 20 invoices.

60. The Tribunal identified that there seemed limited dispute as to matters of fact. Rather the issues principally revolved around the effect of the provisions of the Lease and other requirements. That was not disagreed with.

61. Whilst the Tribunal was only required to determine service charges from June 2016- the earliest within the claim- there was in order to fully understand the parties' positions some clarification of matters pre-dating 2015 when the Applicant took over. That provided useful background context to why a dispute arose and the matters which required determination.

62. The Tribunal was told that the Applicant had produced full records from 2012 but there was not complete documentation from 2008 to then. The amounts of payments made by the Respondent from 2012 to 2015 was also agreed. So, there was no issue as to the Respondent's payments or the Applicant's expenditure for the 2012 to 2105 period identified. The Respondent was concerned that he had made payments of £12,837.00 between 2008 and 2012 but the accounting system showed a balance of £nil as at its commencement in 2012.

63. Mr Brown said that the amounts everyone had paid were recorded [681 (and summarised 686)] and there were accounts from 2009 to the end of 2014 [690- 703]. Mr Hood also said that no information had been identified which ran contrary to the contents of the accounts. The Respondent had first raised the issues about matters prior to 2012 in the current Court proceedings which had been issued in 2021. It was agreed that the Respondent had not been required to pay any service charges until 2008 in return for works he had undertaken. Hence up to that point any balance on his account was £nil. Thereafter, the Respondent asserted that his account ought to have been in credit to

the sum of approximately £8000.00 if he had been charged for the correct elements for which he was liable. He accepted that the account would have been in debit for the sum of £833.00 if he were liable for all elements on which the service charges rendered were based. The issue turned on what he could be charged for pursuant to the terms of his Lease.

64. The Respondent also contended that other lessees had not paid to one extent or another, pointing to the current assets shown in accounts during those years including large sums for debtors- for example 2012 [1174] showed £48,885.00 current assets but £28,910.00 of debtors within that. However, it was accepted that figures changed year on year. Mr Brown said in exhibit 3 to his witness statement that the lessees did not make payments after 2012, the last payment being by Flat 4 on 11th April 2012. Mr Brown said orally that the equalisation process to which reference was made did not simply involve writing off everything owed and starting everyone at £nil. Instead, he said that the approach taken had been to identify the highest amount paid by a lessee (which is indicated to be Flat 4) and require the other lessees to bring their payments up to that level. In consequence, there were significant service charges which had been demanded and which had not been collected from any lessee but by taking the highest amount paid and requiring the other lessees to reach that level, all lessees were in an equal position. That was of course subject to all lessees having liability to pay for all of the same elements. The Respondent said that he did not agree to that arrangement, although that was not considered by the Tribunal to directly be relevant.

65. Such matters pre- date the service charges which are the subject of the current Court proceedings and about which the Tribunal has been required to make a determination. The Tribunal noted that background.

66. It should be recorded that the parties only mentioned one case authority other than the previous decisions related to the Estate referred to above and not any other matters of law. The Respondent, mentioned in passing one case authority, given as *Leicester v Master* LOX 2007 LC and as why he accepted "on account" was enough to enable a reserve fund. The 2017 Decision adopted that approach. The Tribunal did not have a copy of that but did not consider it needed one in this instance.

67. Nevertheless, this Decision refers to some limited additional caselaw both above and below. Careful consideration was given to whether submissions ought to be sought from the parties in relation to any of the statute and caselaw to which the Tribunal refers. The Tribunal concluded that the relevant statute law is frequently encountered and applied by the Tribunal and that the assistance of the parties was not required in relation to that. In respect of the more balanced question of caselaw, it was concluded that all of the cases to which reference is made are well- established authorities- for the propositions referred to,

which have not in the experience of the Tribunal been identified as controversial by legal and other representatives or other parties in previous cases. Hence it was determined not necessary to seek submissions on those authorities.

The jurisdiction of the Tribunal

68. The Tribunal has power to decide about all aspects of liability to pay service and administration charges in relation to residential properties and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charge is in section 18 of the Landlord and Tenant Act 1985 ("the Act") defined as an amount:

> "(1) (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management and
> (2) the whole or part of which varies or may vary according to the relevant costs."

69. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable (section 27A). Section 19 provides that a service cost is only to be taken account of in relation to the service charges demanded insofar as it is reasonably incurred and the services or works to which the cost relates are of a reasonable standard.

70. The Tribunal may take into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

71. There are innumerable case authorities in respect of several and varied aspects of service charge disputes, but most have no obvious direct relevance to the key issue in this dispute. A couple of authorities may merit mention with regard to some relevant general principles.

72. *Cos Services Ltd v Nicholson and another* [2017] UKUT 382 (LC) (and also earlier authorities such as *Carey Morgan v De Walden* [2013] UKUT 0134 (LC)) applies such that there is a two- part approach of considering whether the decision making was reasonable and whether the sum is reasonable. It is also well established that a lessee's challenge must be based on some evidence that the cost is unreasonable. Whilst the burden is on the landlord to prove reasonableness, the tenant cannot simply put the landlord to proof of its case. Rather the lessee must produce some evidence of

unreasonableness before the lessor can be required to prove reasonableness (see for example *Schilling v Canary Riverside Development Ptd Limited* [2005] EW Lands LRX 26 2005).

73. It is important for the parties to be clear that whilst the Tribunal determines the service charges before it which are payable, the Tribunal does not determine the sum due from the lessee to the lessor. That is to say, the Tribunal does not consider the accounting effects of the determination that it makes. That applies in any case. The decision as to how much is due is one for the County Court once the file is returned to the Court following this Decision.

The issues for Determination

74. As referred to above in relation to the Defence, the Respondent advanced a number of arguments as to why the service charges or some of them were not payable by him.

75. One of those is not a matter for the Tribunal. The Respondent said that he was not prepared to pay further service charges because he did not know what the pre-2015 expenditure had been spent on. That is essentially a question of whether the Respondent overpaid in those earlier years prior to the years referred to the Tribunal for determination. Assuming, but without determining one way or the other, that there is an issue the Respondent is able to take, it will be for the County Court to address that, and it is not for the Tribunal to do so.

76. For the avoidance of doubt, whilst other matters were raised by the parties in relation to matters up to 2015, as those fall outside of the period of the service charges within the claim and the matters transferred to the Tribunal for determination, the Tribunal says nothing more about those.

1) Construction of the Lease and service charge obligations

77. This was the primary battleground- to what do the Lease terms mean the Respondent must contribute?

78. The Tribunal firstly determines, agreeing with the approach taken by the Lands Chamber to the leases of other flats within the Estate, that the reference in paragraph 3 of Part II the Fifth Schedule to paragraph 5 should be construed as if it referred instead to paragraph 6, the Tribunal finding there to have been an error in the drafting. Paragraph 6 contains relevant matters: paragraph 5 does not. It is illogical and implausible that the parties deliberately referred to the not relevant paragraph 5 rather than the relevant paragraph 6.

79. Secondly, the Tribunal has no hesitation in echoing the sentiments of the Lands Chamber about the leases of other flats that the Lease was unsatisfactorily drafted, which is abundantly clear. The different wording between paragraphs 3 of Parts I and II of the Third Schedule

and the fact of both of them being included combined with a lack of clear indication why each exists and the lack of a reason for both being expressed in different terms all renders construction of the Lease more difficult than it could have been and more difficult for the parties to operate than ideal. As will be seen, the Lands Chamber judgment has not entirely helped the parties resolve this dispute in the event, not because the judgment is not clear in itself but because of the differences between Flat 6 and the Property.

Extent to which the Respondent must contribute to costs of matters related to the Building

80. Turning to the issues between the parties, the Respondent's case was that the obligations placed upon him as lessee of the Property are not the same as the other dwellings within the Estate save for those which formerly applied to Flat 6. That is to say that he would not have to contribute to the costs of maintaining such elements as the staircase and landings or other parts he did not use in the Main House, although it would follow that he would be liable to contribute to costs in relation to the roof and foundations of the Building for the same reason that Flat 6 was held to be. The Respondent highlighted the words of the Lands Chamber that he "arguably" did not have to contribute not other elements and asserted that he actually did not have to.

81. The Respondent drew a distinction between on the one hand paragraph 6 of Part II of the Sixth Schedule which sets out the matters which the Applicant must attend to and on the other hand what he contended he is obliged to contribute to pursuant to paragraph 3 of Part I and Part II of the Fifth Schedule. The Respondent contended Part I to relate to payments on account and Part II to relate to costs incurred. More specifically, the Respondent argued that there are matters to which other lessees must contribute but to which he does not similarly have to make a contribution.

82. The Respondent also highlighted other similarities between the Lease and the lease of Flat 6. He referred to the fact that for each there is an ability to alter the demise. In contrast, that does not apply to the other dwellings in the Estate. He argued that to be an important distinction. The Respondent equally contended that whilst the varied lease altered the share payable by the Respondent from 1/6th to 20%, it made no change to the elements in respect of which service charges must be paid. Any gaps, as they might be termed, as to the liability of the other flats which has been varied since the dates of the original leases such that the other lessees are liable for a share of all of the Applicant's costs has not, it was argued, altered any limit imposed by the Lease.

83. The Respondent maintained that both Flat 1 and Flat 6 had been leased to the wife of the developer. He argued that to be very relevant.

84. The Applicant pointed to the reference in paragraph 32 of the 2010 Decision to Flat 1 "may" have a lesser obligation, excluding items not

shared, than other flats but did not necessarily mean Flat 1 in fact did have a lesser obligation. Mr Brown also referred to the judgment of the County Court but as that was successfully appealed, it does not assist the Applicant.

85. The Tribunal starts with Part I, which appears first in the Lease and so which must be treated as applicable insofar as Part I and Part II may clash. To use the words of the Lands Chamber quoted above regarding Part II "There is no justification, however, for cutting down the effect of paragraph 3 in Part I by reference to this provision".

86. That said, given that the heading to Part II relates to "Further" covenants, the indication is of additional elements being included in the obligations to extend the obligations beyond those provided for in Part I. That title of Part II would lend no support to applying the provisions of Part II wherever they differ from Part I. The question would instead be whether there is an additional- further- obligation imposed by Part II over and beyond that imposed by Part I. Logically it would be expected that some addition would be found because otherwise paragraph 3 of Part II would be superfluous.

87. The Tribunal notes that the Lands Chamber in construing the lease of Flat 6 identified both a restriction in paragraph 3 of Part I on the elements to which the lessee must contribute by determining all of the matters listed to be ones to which contribution was only required insofar as they were shared and then determined an extension of that by the specific reference to the roof and foundations. There was another way in which the wording of paragraph 3 could have been read so as to include a pause after "decoration" and to identify only the services to be shared, in which case the roof and foundations could have been read as simply specific elements of the wider maintenance, repair and so on obligation- effectively by reading in two commas, after "decoration" and after the second reference to "premises" and before the word "to". There would not then be a restriction followed by an exception to it. However, that is not the construction that the Lands Chamber determined appropriate.

88. The Lands Tribunal no longer exists as such following reforms in 2013, at which time this Tribunal was established. The equivalent of the Lands Tribunal now is the Upper Tribunal (Lands Chamber), the decisions of which are binding on this Tribunal. The Tribunal considers that decisions of the Lands Chamber are similarly binding where they address the same point.

89. In that regard, it is relevant that the decision of the Lands Chamber related to the lease of Flat 6 and not the Lease and so made no specific determination of the liability of the Property in a case determining that liability. Strictly the Lands Chamber's observations as to the Lease and potential liability of Flat 1 were just that and not part of the determinations central to the judgment, which related to the specific leases of and otherwise the liability of other flats. It is also relevant that

the question of whether the effect of the provisions of the Lease of the Property was such that the Respondent was not liable for some costs was specifically left open. It is further relevant that Flat 6 was not part of the Building, whereas Flat 1 is, as explained below.

90. However, the Tribunal considers that whilst the 2010 Decision of the Lands Chamber does not relate to this individual Lease, there is no identifiable proper basis for the Tribunal adopting a different construction in the Lease to the same words in the Lease of Flat 6 granted by the same lessor, much as there were different lessees on the evidence and that the lessee of Flat 1 was Monaliesa Van Gytenbeek in particular. The Tribunal does not consider that where the contracting parties, particularly the landlord, in respect of Flat 6 used same words as those in the (original version of the) Lease of the Property, those same words could be constructed to make different provision between one lease and the next. If there had been different materials terms, the relationship between Mr Van Gytenbeek and Ms Van Gytenbeek may have been part of the facts and circumstances in so far as relevant. There is no need to dwell on that given the lack of difference

91. It should be said that the Tribunal has noted the Respondent's contention that both Flats 1 and 6 were leased to Monaliesa Van Gytenbeek and the reference to her in a document mentioned by the Lands Chamber. However, the fact that the Lands Chamber was in possession of all leases and refers to Flat 6 having not been the subject of any earlier underlease with a first lease of Flat 6 to another party and with little indication Monaliesa Van Gytenbeek did actually ever lease it, leads the Tribunal to find on the evidence before it that she never was the lessee of that flat. Hence, any additional assistance to interpretation of the Lease which there might properly have been, if indeed any, if Monaliesa Van Gytenbeek had been the original lessee of both Flats 1 and 6 does not arise.

92. The Tribunal also notes the planning permission granted by the local Council for Flat 1 (and Flat 6) to be developed referred to in the judgment of the Lands Chamber and that substantial work was undertaken to Flat 6. Whilst the Tribunal is not clear what, if any, development was undertaken to Flat 1, the Tribunal is unable to identify any development which might alter the construction of the previously, or subsequently, agreed provisions of the Lease with regard to the extent of the liability of Flat 1 to contribute to costs for the remainder of the Building.

93. The Tribunal therefore adopts the construction determined by the Lands Chamber in respect of Flat 6 and applies that to the physical features of Flat 1.

94. Those physical features do, however, make a significant difference to the practical effect of the provisions.

95. The Tribunal finds as a fact that the relevant physical features are firstly that Flat 6 is a separate building, albeit small stores to the side of Flat 6 and within the title of Flat 6 are, or at least originally were, joined to part of the front of the Building occupied by Flat 1 as the Tribunal understands matters from the documents.

96. In contrast, the Tribunal finds as a fact that much of Flat 1 is within the shared walls and structure of the Building, albeit that part of Flat 1 extends out beyond that. The lounge, the bedroom, much of the hallway and some other parts, is found to be within a line extending down from the roof/ first floor of the Building. The side wall of the Building up to the roof level above the first floor runs, the Tribunal finds on the evidence presented, from the outer corner of the lounge of the Property, along the division between the lounge and the study as described on the plan including the fireplace to the lounge, and across the front wall of the Building from there, so at least the parts of the Property inside of that are within the Building as a whole, whatever may be found in respect of the remainder of the Property.

97. There are therefore parts of Flat 1 which extend out further than the remainder of the Building and bounded by walls and a roof only serving Flat 1- and so which are not shared by other flats- but any relevance of that to the (lack of) liability of other flats to contribute to those matters is not relevant to the liability of Flat 1 to contribute to the Building.

98. Hence applying the construction as held by the Lands Chamber to the facts as found, this provision would firstly require the Respondent to pay a share of costs for the maintenance of the roof and foundations of the Building in the same manner as Flat 6.

99. Secondly the physical difference between the locations of Flat 1 and Flat 6 has the result that the effect of the paragraph is that as a matter of fact "the Premises ..... shared by the Demised Property and the rest of the Premises" is the Building as a whole. The Respondent therefore has to contribute to the maintenance etc of the Building in general.

100. Whilst the Building was not shared by Flat 6 and the remainder, so Flat 6 was only held liable for the roof and foundations and then because that was held to be specifically provided for by the provision, the Building is as a fact physically shared by Flat 1 and the other flats.

101. Turning then to Part II, the key question is, as identified above, whether that does in fact impose any obligation "Further" to those created by Part I. The Tribunal determines that there is not.

102. There is a distinct danger of over- explaining a construction which goes on to make no difference. The Tribunal seeks to avoid doing so.

103. The Tribunal accepts that there could potentially have been a change to the extent of the Respondent's obligations arising from that variation. Insofar as the contents of the Sixth Schedule have been altered by the

new wording, a) to d) of the new wording cover the same ground as the original wording in practical effect, albeit expressed differently. However, e) says "e) All those parts of the Premises not exclusively enjoyed by leases licence or otherwise by the Lessee or the occupiers of the Other Units including the gardens and grounds at the Premises". That might have altered the position from the versions of paragraph 6 considered by the Lands Chamber.

104. The Tribunal noted the submission of the Respondent that the later variations to the leases of Flats 3 and 4, for example, had included an amendment to paragraph 3 to include reference to paragraph 6. The variation of the Respondent's Lease did not contain that amendment: equally the words which were already included in paragraph 3 of Part II continued to apply.

105. The Tribunal notes with care the Lands Chamber said that in the lease of Flat 6, the words after "in particular" extended what had gone before (although did not expand on and explain that). The Tribunal considers that in the usual course, the phrase "in particular" is not intended to extend something stated before it but rather to more specifically identify significant parts of what is included. However, there is no need to consider further that particular point as nothing turns on it.

106. More significantly, the Respondent had to contribute to any element is one "the support shelter protection or use of which is common". The wording in the variation clarifies the wording of paragraph 6 in the sense of clarifying the elements of the Building to which contribution must be made if the element provides one of the purposes quoted. The change of wording to paragraph does not add liability to matters the use or similar of which is not in common.

107. It is again fundamental that the physical features of Flat 6 and of Flat 1 are very different. In contrast to Flat 6, not only the roof and foundations but also the walls and other structure (or parts of them) of the Building provide support, shelter and protection for Flat 1 or parts of it. The disrepair or collapse of parts of the Building would be likely to impact on other parts and to affect the support, shelter and protection arising from those.

108. The Tribunal identifies that it may be possible to construe the Lease as resulting in some areas of wall or other elements of the Building providing support shelter or protection to Flat 1 and others not, but determines that the proper construction of the Lease requires the identification of elements of the Building- roof, walls, external doors and the like- not the precise location of different areas of those elements.

109. That avoids argument about which works to, for example, the walls were to walls directly supporting the Property and which to other walls that do not so obviously so support but might still affect support. It avoids attempts to divide costs across broad elements into specific

parts of those according to whether the given part does or does not obviously provide support shelter or protection with costs split perhaps according to the proportion of the parts that do to the parts that do not. There is scope for such arguments being endless and with significantly disproportionate time and cost being involved. Whereas Flat 6 has an entirely separate entrance, the Tribunal understands from the documents that Flat 1 has access to the communal areas of the Building and so has the use of them, irrespective of whether the Respondent utilises that. Specifically, they are elements the use of which is in common and in contrast they are not exclusively enjoyed by the Respondent or the lessees of the other flats in the Building.

110. The Tribunal considers that the above is also consistent with references to the roof and foundations generally in Part I. Given that the "Premises shared by the Demised Property and the rest of the Premises" in Part I is the Building as a whole, it also makes little sense to apply some more limited scope in Part II which would make no practical difference to the repairing obligation and the contribution obligations of the Respondent.

111. Hence, to repeat, the Tribunal is unable to identify any (or at most any more than nominal) extension of relevant obligations by paragraph 3 of Part II as compared to paragraph 3 of Part I. No lesser obligation which might be imposed by Part II is relevant. The Tribunal accepts that does prompt the question of why the provision exists, to which the Tribunal is inclined to answer that it appears to reflect the less than satisfactory drafting of the Lease as a whole.

112. The Tribunal therefore considers in light of the above that the Respondent has erred in concentrating on the construction as determined by the Lands Chamber but without identifying the quite different facts as to the nature and position of Flat 1 as compared to those of Flat 6 and the different obligations which the same wording produces in those different circumstances. It is, as explained above, those distinct factual differences which produce quite different results when the construction is applied to them.

113. By way of confirmation, the Tribunal determines that the provisions of the Lease when applied to facts of the physical Flat and Building result in the Respondent being required to pay service charge for costs in respect of the structure (including but not limited to the roof and foundations) and the communal parts of the Building.

<u>Recovery of agents' fees</u>

114. A tribunal has already determined that the Lease does not permit the Applicant to recover any fees of agents (as opposed to for example contractors undertaking works), including managing agents and accountants from the Respondent. Insofar as any further determination may be appropriate this Tribunal determines that the Applicant is

unable to do that. Any charges for such fees are not payable by the Respondent for any year to date or ongoing.

115. It was noted that in the 2017 proceedings, the Applicant's counsel's Skeleton Argument for the hearing had identified that the then current provision did not require the Respondent to contribute to all costs and that was a reason advanced for seeking the variation. The grounds for the application also quoted paragraph 32 of the judgment of the Lands Chamber. Hence the Respondent's position in these proceedings was apparently accepted on behalf of the Applicant in those, although that was prior to the Applicant withdrawing the wider variation it had been seeking.

116. Whilst strictly the determination of a differently constituted tribunal at the same level as the Tribunal is not binding, any such determination must be accorded respect. It would be quite a step to go against a determination made several years ago and unchallenged, even if the Tribunal now considered the previous tribunal to be incorrect. The Tribunal does not consider it necessary or appropriate to take that course. Rather, the Tribunal both agrees with and follows the 2017 determination. It should be added that, understandably, the tribunal did not in 2017 seek to alter any matter determined by the Lands Chamber in 2010.

117. The Tribunal determines that the correct construction of the Lease, following the 2017 Decision is that the Respondent is not liable to contribute to any fees of agents employed by the Applicant, whether accountant fees, managing agent fees or fees of any other similar agent, if any, (but for the avoidance of doubt, excluding from that contractors employed to undertake works and any others properly falling outside of that term from time to time).

118. In light of all of the above, whilst the Tribunal notes that in the County Court trial, the Applicant's witness sought to assert that the variation was intended to bring the Lease into line with the leases of the other dwellings, the Tribunal determines it clear that the variation did not entirely do so. Whereas it was put to the Respondent in the County Court trial that he was obliged to pay 20% of all of the expenditure on which the service charges were based, he was correct to reject that although only to the above extent.

Reserve Fund

119. For the avoidance of doubt, the Tribunal agrees that the Applicant is entitled to claim sums reasonable to be paid into a reserve fund in light of the unchallenged 2017 Decision so determining.

The effect of the above determinations

120. The Applicant's representatives accepted that on the basis of the above, the Respondent's share of the agent fees incurred by the Applicant

would need to be credited to the tune of 1/6th to 2014 inclusive and 20% from 2015 to 2017, although as identified above it is beyond the jurisdiction of the Tribunal to direct that or any other matter related to accounting and the Tribunal is required to make a determination of service charges for specific years. The Applicant identified that £38,298 of professional fees had been incurred up to 2018, of which a share has been charged to the Respondent, and that will no doubt have increased since.

121. Whilst it is simple enough to state that the service charges reflecting 20% of the cost of above figure for agents' fees such as it relates to 2016 and 2017 are disallowed as not payable, the difficulty with this Decision beyond that is whether the Tribunal has exact figures for the fees of any agent incurred.

122. The Tribunal notes that accounts give some figures for, for example, accountancy fees but also at least an instance of managing agent fees shown as a pre- payment. The Tribunal is not confident that it can identify each agent fees each year and the service charge related to that. It may be that there is detail of how charges to the Respondent have been calculated and if the Tribunal has lost that in the quantity of other papers then the Tribunal is sorry for that.

123. Hence, with regret, the Tribunal cannot identify the payable service charges as affected by this part of the Decision for any of the relevant years.

124. The Tribunal does also appreciate that the other lessees might regard the outcome as unfair from a wider perspective, given that necessarily the service cost of any agent fees still must be met. A smaller share of that being paid by the Respondent necessarily means that there must be a greater part paid by the other lessees. Nevertheless, the Respondent is entitled to follow the provisions of the Lease and to limit his payments to such sums as the Lease requires him to contribute.

125. The Tribunal adds that it was suggested on behalf of the Applicant in closing that the effect of the Lease not requiring the Respondent to contribute to various matters may be that a further application would be required pursuant to section 35. It is not for the Tribunal to seek to determine in advance an application which may or may not be made. The Applicant can bear in mind the 2017 Decision and take any advice.

126. It is briefly added for the avoidance of doubt that none of the above should be taken to suggest that the Respondent is liable for costs in respect of the garden shared by 3 other flats which the Lands Chamber identified is shared between those 3.

127. Finally in this part, the Tribunal sets out in case it may not be apparent from the above, that the Tribunal does not agree the distinction argued for by the Respondent that Part I is amounts which may be demanded on account and Part II is in effect final amounts. That might be logical.

If Part I properly construed firstly only related to sums to be paid out by the Applicant in the future and secondly potentially also excluded items then found in Part II that might have been the outcome. However, no such distinction is identifiable, not least because Part I refers to "incurred", so in the past and mirroring part of the wording in Part II, as well as referring to "to be incurred".

2) Compliance with statutory requirements

128. The next wider argument advanced by the Respondent related to the service charge demands themselves. The Tribunal identified three limbs to the arguments.

129. The first [114] is that 8 of the demands did not include the Applicant's addresses when issued to him. The Respondent referred to an example in the supplemental Court bundle [S386], pointing to that containing only the address of the agent. He drew a contrast with the equivalent demand as placed in the (Tribunal) bundle [63] (the first of the demands provided with the claim [63- 100].

130. The Applicant's position was that the demands to which the Respondent referred had all been re- issued and the re-issued demands sent out en- masse. It was accepted that the originals had not contained the correct address, hence the re- issue. It was the re- issued versions on which reliance was placed by the Applicant in the Court proceedings, hence their presence in the bundle. So, the Tribunal needed to determine the service charges payable pursuant to those re-issued demands and not the earlier ones. The Respondent did not dispute that the demands had been re- issued but did assert that only one summary of tenant's rights and obligations was sent with the batch of re- issued invoices.

131. The question for the Tribunal arising therefore became one of whether each individual demand had to be accompanied by a separate summary of rights and obligations or whether the provision in section 21 of the Act that a demand must be accompanied by a summary could be fulfilled by there being a single summary sent with two or more demands served at the same time.

132. The Tribunal determines that the answer to that question is the latter, that is to say that there can be one summary served with more than one demand if the demands are served together. The purpose of the summary is to make the lessee aware of the rights in respect of the service charges demanded: it is not to produce extra pages of documentation which add nothing of use.

133. In any event, there was a summary of rights sent. Each demand was accompanied by that summary. There is no stated requirement that each individual demand is separately accompanied by its own summary individual to it and not applying to any other demand. There is no suggestion that two or more demands necessitates two or more

summaries. If the Act had intended that, the section could have stated it. The Act does not. The demands were not rendered invalid for the lack of more than one summary.

134. The Applicant additionally referred to another Notice [1143]. However, the Tribunal understands that relates to (ground) rent and so is not relevant to this determination. There was reference also to a statement of Helen Denby- Ashe [C947] about re- issue of ground rent demands, which had appeared at first to be relevant but turned out not to be.

135. The Respondent contended that the font size of the information in the summary of tenant's rights and obligations was 8.5, whereas the requirement is for size 10. He pointed to an example in the bundle [90] and referred to the font size being larger in others [88 and 89].

136. The Respondent did not accept that the issue may be one of how the summaries were photocopied for inclusion in the bundle. He was adamant that demands were received by him in the smaller font size. The Tribunal does not need to make any finding about that.

137. That is because the Respondent accepted that when the letter of claim was prepared, the single example of the summary included had correctly larger font. It was established that it had been the letter of claim that had attached the re- issued demands with the correct address for the landlord.

138. The Tribunal determined on the available evidence that those demands had been accompanied by a summary in the correct font size. The font size of earlier summaries sent with demands not relied upon by the Applicant did not matter.

139. In addition, the Respondent asserted that the wording of the summaries was different to that required. However, it was established that again related to the summaries sent with earlier demands [890] and not the summary with the latter demands [88 and 89]. Hence again the point was not relevant to the re- issued demands on which the Applicant relied.

140. The Tribunal therefore determined that the relevant demands were accompanied by a summary of rights containing the correct wording, that is in addition to the summary accompanying each demand and the font size being correct.

141. Therefore, the Tribunal determined that the Respondent's challenges on the basis of contended failure to comply with statutory requirements failed. Hence, in general terms service charges are payable, subject to not falling outside of matters in respect of which the Respondent has contracted to pay and to the outcome of the specific other challenges considered.

3) Commission/ fee paid to managing agent regarding insurance

142. The next argument advanced by the Respondent related to the sum paid to the managing agent in respect of the insurance policy for the Estate. It will be identified that if there was a fee paid by the Applicant to such an agent, the Respondent is not required to meet any share of the cost of that given the 2017 Decision that his liability does not include any agent's fees.

143. The Applicant's position is that the sum was not a fee paid by the Applicant but rather was a commission paid by the insurance company, and not by the Applicant, and hence the 2017 Decision had no impact.

144. The Tribunal agreed with the Respondent that if there was a fee paid to the managing agent then no share of that cost was recoverable from this lessee given the limits on the matters to which the Respondent must contribute, as identified above. However, the Respondent failed to demonstrate that there was any fee paid.

145. There was no evidence of any sum paid directly by the Respondent to the agent at all. There was also no evidence that the cost of insurance was any greater because of any commission paid by the insurance company to the agent. That is to say that if the commission had not been paid, the cost of the insurance payable by the Applicant would have been any lower. The Respondent did not demonstrate the overall cost of insurance in any or all years to be unreasonable.

146. The Tribunal determines that the service charges demanded of the Respondent in respect of insurance for each year within these proceedings were payable.

4) Invoices from 2015 and earlier

147. As identified above, the Respondent accepted that he had paid the service charges demanded up to 2015 but suggested in the CMH that other tenants had not paid and that service charges charged to him during those earlier years had been higher than they ought to make up for such shortfalls. The Applicant had explained its position as set out above.

148. As explained above, the Tribunal is required to determine service charges for the years 2016 to 2022, no more. Hence, any determination by the Tribunal is limited to any impact on service charges for those years. The Tribunal determines that the service charges demanded during the years under determination were not shown to have been demanded from the Respondent from 2016 for the purpose of making up for any shortfall from any other lessee to that date.

149. All of the above in this section requires the observation that service charges demanded of the Applicant both prior 2016 and from 2016

onward included agents fees for which he was not required to make payment. So, to that extent payments made by the other lessees did underpay as compared to the payments which ought to have been demanded of those lessees- where the Respondent was not required to contribute, the charges to him ought to have been lower and equally the charges to others ought to have been higher in order to meet the Applicant's cost. However, that is about how demands ought to have been calculated and not about the demands actually made, so is a different issue to the one raised by the Respondent.

5) Delay and increased costs

150. The Respondent said in relation to this argument that a report was prepared in 2008 from a company called BCP, including a survey report and an estimate of works totalling approximately £50,000.00. He asserted that the work was only dealt with in 2018 and 2021, at which time the work undertaken cost £100,000.00 for work to two elevations of the Building. He also referred to a 2019 tender [S702]. Hence, the cost when the work was undertaken was, he contended, substantially more.

151. The Respondent asserted that part, at least, of the reason was that the Building had deteriorated in the meantime in consequence of the absence of work, hence it required more work to return it to a satisfactory condition than it would have done if the deterioration had not been permitted. By way of specific example, the Respondent asserted that at an earlier point the windows could have been repaired whereas by the time the work was undertaken, they needed to be replaced. He also contended additional deterioration to painting and to the roof.

152. The Respondent argued that there are separate obligations to repair and maintain on the one hand and rights to recover money for service charges on the other.

153. Mr Brown argued that the managing agents would not instruct a contractor until they were in possession of sufficient funds- and hence in effect that for as long as they were not, the work was unable to proceed. That gave rise to a question for the Tribunal as to whether the Applicant was obliged to repair when repair was required and should then recover any additional sums needed from any lessee who was obliged to contribute and had not done so, or whether alternatively the Applicant was only obliged to repair when in receipt of all necessary funds to pay for the works.

154. The Applicant's case was that the Estate had been purchased from the previous owner in order for works to be undertaken. The Applicant had recommissioned a survey in 2015 for that purpose. In addition, works had been undertaken in 2017 to make the Building watertight and functional. A report had been obtained from Greenwoods and much of

that had been undertaken – approximately 3/4s. Lack of payment from Flats 1 and 2 had, it was contended, delayed the works.

155. The law in relation to failure to undertake works and increase in the works subsequently required, often termed "historic neglect" is as follows.

156. There are two strands to considering such arguments, as explained in a decision of the Lands Chamber, the predecessor to the Upper Tribunal (Lands Chamber) and the decisions of which are equally binding on this Tribunal. That is *Continental Property Ventures Inc. v White* [2007] L. & T.R. 4.

157. On the one hand, the reasonableness of service costs must be assessed at the time at which the costs are incurred. The question is whether the cost is a reasonable one to incur in the circumstances existing at that point. On the other hand, in terms of whether service charges are payable in respect of those costs and to what extent, the lessee is entitled to set off damages which would be payable to him or her in consequence of the delay, including a sum for the additional cost. In an arguably somewhat roundabout way, that essentially would be likely in the usual course (although not necessarily always) to get the parties back to the position that they would have been in had work been undertaken at the time it ought.

158. As to construction of the Lease and the Applicant's repairing obligation, the Tribunal determines that paragraph 6 of the Sixth Schedule requires the Applicant to deal with maintenance and repair amongst other matters. There is no suggestion that obligation only arises upon the lessee paying the service charges to contribute to that. The paragraph makes no mention of that. The Tribunal is unable to identify any other paragraph that does so.

159. Similarly, there is no other identifiable provision stating that the lessee is not entitled to such repair, maintenance and similar in the absence of payment. Whilst it is plainly a difficulty for the Applicant, which may have a particular problem with ready resources, the obligation to repair cannot be avoided. If there is a delay in the undertaking of works and an increase in cost, whether because of more extensive scope or otherwise, that lies at the Applicant's door.

160. The Respondent pointed to the original tender reports giving a price of approximately £50,000. The Applicant did not disagree with that but pointed out that allowing for inflation. £50,000 in 2008 would be £85,000 today. The Respondent did not challenge that, so the Tribunal treats it as correct. The figures are certainly not so obviously wrong to justify a different approach in the absence of a challenge.

161. The parties referred to documents [347 and 348] but which related to interim sums invoiced for the works. The Tribunal did not find those of great assistance.

162. In relation to the facts, the Tribunal finds that one of the difficulties is that it is not uncommon in the course of works to establish that other matters require attention. There is inevitably some uncertainty until works commence, covering or other elements requiring removal are removed, parts of a building are stripped and so on. It is far from uncommon for additional matters which were previously hidden to then be identified as requiring attention.

163. Whilst the Tribunal understands that the cost incurred is not for all of the works referred to in 2005, it is unclear to what extent the end cost will be greater in real terms, including costs for additional items which may have been discovered in the course of works if undertaken in 2008. The Respondent also identified that there have been provisional sums and so uncertainties built into the pricing.

164. The Tribunal considered this a rather balanced issue as to whether the Respondent had raised a sufficient challenge and then the Applicant had sufficiently met it. However, ultimately the Tribunal determined that the only challenge was really about the difference between figures as to the cost and that there were too many uncertainties for the Respondent to have sufficiently advanced a case that the costs were unreasonable for the Applicant to demonstrate a lack of additional cost in meeting it. If the Respondent had managed to advance more of a case, it is certainly far from clear that would have adequately been met.

165. Consequently, despite some initial attractiveness to the Respondent's case, the Tribunal determined that on the evidence and cases presented, this challenge failed and hence the costs of the works as undertaken were one of a number of such sums which were reasonable.

6) Major works- consultation

166. In respect of the major works, there were three points raised by the Respondent in relation to an argued failure of the Applicant to comply with requirements and a contended restriction on the sum recoverable by the Applicant as service charges.

167. As to the first, the Respondent essentially expected a considerably greater amount of detail than the section 20 consultation process requires the Applicant to provide.

168. The process requires a landlord to serve three notices. The first is a notice of intention to undertake works. That must explain to the lessees that they are able to nominate a contractor from which the landlord must seek a tender. The second notice advises the lessees of the tender prices received. The third notice explains to the lessees that the landlord is proceeding and which contractor won the contract.

169. Most significantly in relation to the second notice, there is no requirement for the landlord to provide to the lessees the full tender

documentation received. The requirement is to provide the prices overall.

170. The Tribunal is not surprised that the Respondent, not least given his profession as a quantity surveyor, was interested in the details of the tenders. However, that personal interest on the one hand and the steps which the Applicant was required to take for the consultation to be a valid one on the other hand, are quite different.

171. The Tribunal finds that the notices issued by the Applicant met the statutory requirements, which is what they needed to do. The fact that the Applicant did not provide all of the additional information that the Respondent would have liked to receive is not relevant to compliance with those requirements, which is the point for determination.

172. The Tribunal observes that in the event of further major works in the future, the Applicant might note that the Respondent would like to receive additional information and might consider whether it is content to provide that. It might conclude that provision of the information is worthwhile. Equally, the Respondent should note that if the Applicant chooses to limit itself to no more and no less than that required by statute and regulations, the Respondent cannot object to the service charges for that reason.

173. As to the second point, that was that the works undertaken went beyond the works identified in the consultation process. The Respondent in essence argued that there should have been a re- tender. The Applicant said through Mr Brown that in effect it was not possible to have identified that in advance and re- tendered.

174. The Tribunal finds that the works undertaken were of the nature of the originally intended works and had not become something different. As identified above, it is not uncommon in the course of works to establish that other matters require attention. In the large majority of cases it would be neither practical nor is it necessary to then stop and re-tender the works, which might be needed a number of times as other items are found and could substantially delay works to the detriment of all concerned. The Tribunal accepts that there could be such a substantial change that a further consultation is required and does not rule out that ever being possible, but this was not such an instance.

175. The Tribunal determines that the service charges in respect of the major works the subject of the challenged consultation are payable in the face of the challenges to the consultation.

176. In addition, the Respondent raised a third point about the date of the consultation as compared to the date of the works or perhaps more accurately the date of the request of service charge payments for the works consulted on as compared to the date of them being undertaken. He asserted that requests towards the major works would have been reasonable in 2019 onwards but not earlier.

177. The Applicant's case was that there was preparation for the major works and that there had not been requests for large sums. Mr Brown contended that the Applicant considered it appropriate to spread the payments from the lessees and those were reasonable at the time. He said that there was a budget for costs including the works. Originally, it had been hoped that works might start in 2018.

178. The Tribunal determined that the Respondent had not demonstrated the service charges or the consultation to be unreasonable for this reason. The budgeting by the Applicant was not demonstrably unreasonable and the Tribunal did not consider there to be any failing with the consultations for this reason.

Conclusion

179. The service charges charged by the Applicant to the Respondent are not payable to extent that they comprise costs payable to any agent of the Applicant, including but not limited to accountant fees and managing agent fees (the term agent for these purposes not including contractors engaged to undertake physical work to the Estate or others not agents as the contracting parties intended term).

180. The service charges charged to the Respondent by the Applicant are otherwise payable as demanded.

181. The Tribunal noted at the end of the hearing the uncertainty as to whether sums could be identified sufficient to give figures for payable service charges. As explained above, the Tribunal is unable to determine the exact figures in the absence of clarity about amounts of the fees in any given year. The Tribunal gives Directions in relation to that below.

Costs of the Tribunal proceedings

182. There were brief submissions made as to unreasonable conduct by the Respondent and as to rule 13 at the hearing, although that pre- dated the determinations now made and so inevitably did not reflect the up-to-date position.

183. The Tribunal may make an award of costs of Tribunal proceedings as between parties pursuant to section 29 of the Tribunals Courts and Enforcement Act 2007. However, the power is substantially proscribed by rule 13 of The Tribunal Procedure (First Tier Tribunal) Rules 2013. The Tribunal must decide as a fact that there was unreasonableness in relation to one of the matters set out and if it so finds then has a discretion whether to award a party any costs and then if an award is made the Tribunal decides the amount.

184. The Tribunal considers that rather than the fairly brief submissions made with an inevitable lack of knowledge of the outcome, if the

Respondent (or Applicant) is to pursue such an application, that would be better done once this Decision has been received and considered. The Tribunal provides directions in relation to any such application if a party considers that appropriate.

185. In a related but somewhat different vein, the Tribunal has power to disallow the recovery of costs of the Tribunal proceedings by a landlord as service charges and / or administration charges pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and leasehold Reform Act 2002 where considered appropriate. It is unclear whether the Applicant has incurred sums which would be regarded as costs and so whether any potential recovery has relevance. However, the Tribunal also provides directions in relation to any such application by the Respondent if the Respondent considers that appropriate.

186. The Tribunal understands that no fee was paid to the Tribunal in respect of the application or the hearing. That is because of the Court fee payable for issue of the Court proceedings exceeded fees which would have been payable for Tribunal proceedings. In such circumstances, the Tribunal does not seek to charge any application or hearing fees. Hence, nothing falls to be determined in relation to fees.

DIRECTIONS

Service charge sums

187. The Applicant shall by **29th July 2025** provide amended figures for the service charges year by year in light of the above determinations.

188. The Respondent shall by **12th August 2025** respond setting out whether the Applicant's figures are correct and if the Respondent considers the figures are not correct, the Respondent shall set out for what reason and, if practicable, provide alternative figures.

189. The Applicant may by **19th August 2025** reply to any additional matters raised by the Respondent and not addressed in the Applicant's previous document but only any such additional matters raised by the Respondent.

190. The Tribunal will determine the figures on the papers as soon as practicable thereafter.

Costs and fees

191. The Respondent shall by **29th July 2025** provide written representations in support of any application pursued for litigation costs of the Applicant to be disallowed as recoverable as service charges and/ or administration charges and additionally in support of any

application that any fee paid by the Applicant in the Tribunal proceedings, if any, should not be recovered.

192. The Applicant shall by **12th August 2025** provide any written representations in response.

193. The Tribunal will determine any applications as soon as practicable thereafter.

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.