



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

**Case Reference** : HAV/00HB/LAM/2025/0612  
HAV/00HB/LSC/2025/0725

**Property** : 15 Miles Road, Clifton, Bristol, BS8 2JW

**Applicant** : Malvindra Singh

**Representative** : ---

**Respondent** : 15 Miles Road Limited

**Representative** : Brittany Pearce of counsel  
instructed by MFG Solicitors

**Type of Application** : Application for the Tribunal to appoint a  
manager – Section 24 of the Landlord and  
Tenant Act 1987  
Application for a determination of liability  
to pay and/or reasonableness of service  
charges – section 27A of the Landlord and  
Tenant Act 1985  
Ancillary applications

**Tribunal Members** : Judge J Dobson  
Mr M Ayres FRICS  
Mr M Jenkinson

**Date of Hearing** : 12<sup>th</sup> and 13<sup>th</sup> February 2026

**Date of Decision** : 31<sup>st</sup> March 2026

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**DECISION**

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## **Summary of Decision**

- 1. The Tribunal determines that the £4,980.50 of service charges paid by the Applicant and used to pay ¼ of identified legal costs incurred by the Respondent were not payable. Further, any subsequent service charges demanded from the Applicant and used to pay ¼ of legal costs incurred by the Respondent were not payable.**
- 2. The Applicant's other challenges to service charges fail.**
- 3. The Tribunal does not appoint a manager.**
- 4. The Tribunal refuses the Applicant's applications pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 such that the Respondent's legal and litigation costs of the applications may not be recovered as service charges or administration charges.**
- 5. The Applicant shall bear the application and hearing fees.**

## **Background**

1. The Applicant is the lessee of what is known as Ground Floor Flat, 15 Miles Road, Clifton, Bristol, BS8 2JW ("the Flat"). The Flat is a 3-bedroom flat (as described in the applications below) and is located on the ground floor as might be expected. The demise includes the front garden to the Property. The Applicant purchased the Flat in or around 2002.
2. The Respondent is the freeholder of 15 Miles Road, Clifton, Bristol, BS8 2JW ("the Property"). It is a lessee- owned company, registration number 01911419. The lessee(s) of each flat own a ¼ share. The Property comprises 4 flats. It was first built in or around the 19<sup>th</sup> century, most likely as a single house. It was converted into the current flats in or about 1985.
3. The current directors of the Respondent are the lessees of the other 3 flats at the Property- Alistair Hales (Garden Flat/ Basement Flat), Jennifer Haslam (First Floor Flat), and Holly Brooke (Top Floor Flat). The Applicant was also a director from 15<sup>th</sup> July 2002 until 3<sup>rd</sup> August 2020. The Respondent employs a managing agent.
4. The Applicant made an application [25- 46] dated 4<sup>th</sup> July 2025 for determination of liability to pay and reasonableness of service charges for the years 2011 onwards pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The Applicant further sought orders

pursuant to Section 20C of the Landlord and Tenant Act 1985 extinguishing the Respondents' rights to recover the costs of these proceedings through the service charge and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 extinguishing the Respondents' rights to recover the costs of the proceedings as administration charges.

5. The Applicant additionally made an application [6- 24] for the Tribunal to appoint a manager under s.24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The nominated manager was the former managing agent employed by the Applicant. The Applicant again sought an order, under section 20C of the Landlord and Tenant Act 1985. It should be said that the Applicant sought various orders beyond the jurisdiction of the Tribunal and no reference is made to those in this Decision.
6. The Applicant served a Notice pursuant to section 22 of the 1987 Act dated 10<sup>th</sup> December 2020 asserting breaches of the lease in the Second Schedule, detailed in the Third Schedule and with required action in the Fourth Schedule [67. Given the length of the contents and the time elapsed between the Notice and the application to the Tribunal, it is not practical (and it is not necessary) to set them out in this Decision.
7. There were proceedings between the parties determined in 2022 (in "the 2022 Decision") in respect of the actual service charges for various earlier years- 2015 to 2021- and the actual service charges for the service charge year 2021- 2022.
8. A money claim was made in the County Court by the Respondent against the Applicant for service charges for balance sums in respect of major works. A judgement was obtained ["the 2022 Judgement"].
9. There are also proceedings issued by the Applicant against the Respondent in November 2025 which are ongoing ["the 2025 proceedings"]. Those are agreed to relate to the re-instatement of flooring to the Applicant's flat and compensation, although it was established at the start of the hearing that as the works themselves had now been paid for, that claim only remained in respect of a claim for damages for inconvenience.
10. In terms of procedural matters in these proceedings, there is sufficient merit in setting out a little more than might usually be the case. Firstly, Directions were given on 3rd September 2025. [90- 96] It was explained in respect of the appointment of a manager that the Tribunal was unlikely to appoint the then proposed manager, Benjamin Carpenter of Markson Property Management, given his previous contractual relationship with the Applicant. Provision was made for an alternative candidate to be proposed.
11. In addition, the fact of the application including years dealt with within the 2022 Decision and years prior to the several challenged in those

proceedings (2011 to 2014 inclusive) was raised. The Applicant was given the opportunity to explain subsequent to that why he ought to be permitted to pursue the service charges for those years, but he did not comply with the relevant directions and hence the application was struck out [97- 101] in respect of years up to and including 2021, save to any extent that there were matters in 2021 which were not raised in the proceedings issued at that time and resulting in the 2022 Decision.

12. At a further case management hearing on 14<sup>th</sup> October the usual sort of Directions were given [102- 112] for the preparation of the applications for final hearing. The Respondent was directed to prepare the hearing bundle. Other case management applications were subsequently made but none require to be set out here.
13. The bundle amounted to 1477 pages. Whilst the Tribunal makes it clear that it has read the key documents it identified in the bundle and any documents not already read to which either of the parties referred in their cases and in the hearing, the Tribunal did not read all of the documents in the large bundle in detail, not least because the relevance of many was not clear in advance of the hearing, or indeed after it. The Tribunal does not refer to all of the documents it did read fully in detail in this Decision either, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents relevant to the issues in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF page- numbering.
14. The Tribunal considers that it ought to record that the Respondent said, and the Applicant did not disagree, that the bundle contains only approximately 1/3 of the documents [pages 505- 1457] sent to the Respondent by the Applicant, duplicates having been removed. It is said that 3,500 pages were sent all told but the remainder were sent after the time provided for in the Directions- see further below. In addition, it was said that the Applicant also provided various emails and a 200- page witness statement comprising 3,500 un-numbered paragraphs.
15. This is an imperfect, although perhaps as good as any, time to record that the Tribunal has been mindful of the guidance of the Senior President of Tribunals to seek to keep decisions relatively short. However, the Tribunal finds it necessary to provide its findings and reasoning on the issues. The Decision nevertheless seeks to focus solely on the key issues and on the whole seeks to avoid venturing into the many other matters mentioned in the papers or at the hearing. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues remaining in these applications. The Tribunal specifically seeks to avoid making findings which may affect other ongoing proceedings where avoidable, although necessarily the Tribunal must make any

findings of fact and determinations required in order to reach its decision. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing.

### **The Law in relation to service charges and jurisdiction**

16. Essentially, pursuant to section 18 of the 1985 Act, the Tribunal has the power to decide about all aspects of liability to pay service charges which vary year to year and can interpret the Lease where necessary to resolve disputes or uncertainties. A party may apply pursuant to section 27A of the Act for determination of by whom, to whom, how much, when and how a service charge is payable.
17. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor’s costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.
18. Section 19(1) in respect of costs incurred provides that a service cost is only to be had regard to insofar as it is reasonably incurred and works or services to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the costs which are to be met through the service charge.
19. It is important to identify that the above all relates to residential properties. Some of those have leases which include other elements, such as a garage and may have a single share covering both or a different provision. The Tribunal jurisdiction does not cover elements which fall outside of residential leases.
20. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.
21. 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.”
22. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to

this dispute. Ms Pearce cited a significant number of authorities for various propositions, not all about service charges. The Tribunal does not consider it necessary to refer to any specifically at this stage. The Tribunal is well aware of the relevant wider law and has applied it in reaching this Decision. The Tribunal does not consider that it will assist to set out the general law regarding service charges further. To the limited extent of reference to case authority below, that is referred to when relevant to the particular point.

### **The Law in relation to appointment of a Manager**

23. The relevant statutory provisions in respect of this application are found in s24 of the 1987 Act. The provisions explain that the Tribunal may appoint following an application. There are two broad situations.
24. The first is that there has been a relevant failing on the part of the management of the Property by the freeholder or management company. That may be:
  - i) a breach of any obligation owed to the lessee under the lease and relating to the management;
  - ii) that unreasonable service charges have been made, or are proposed or likely to be made;
  - iii) that unreasonable variable administration charges have been made;
  - iv) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of the Act, and/ or
  - v) that the relevant person/ entity has failed to comply with any relevant provision of an approved code of practice.
25. Those bases are essentially what are often described as 'threshold criteria' for the making of an order. That effectively involves the Tribunal looking backward. The breach or other issues can be only one of many alleged and can be modest.
26. The fact of there being a breach or there being other circumstances does not mean that an order must be made, simply that one then may be made. It then falls to the Tribunal to consider whether the making of an order is just and convenient. That involves rather more of the Tribunal looking forward. Several examples of factors which may support the making of an order or may support not doing so are identified in case authorities. Any specific decision must necessarily consider the interplay of any relevant factors in the particular case.
27. The second basis is that irrespective of whether there are any of the above failings in previous management, it is just and convenient to make an order in all the circumstances.
28. Necessarily that still involves the Tribunal establishing the position and finding that there are matters which render an appointment just and convenient. However, it does not require the Tribunal to make any

specific finding about breaches and other specific issues and does not require any determination other than that having weighed up such matters as the Tribunal considers are relevant it is just and convenient to appoint.

29. An order appointing a manager should be made lightly, given that it necessarily involves an interference with the property rights of the freehold who would otherwise manage the Property.
30. Certain of the words and phrases are explained or expanded upon in subsequent subsections of section 24 of the 1987 Act. Later subsections address the extent of the premises and the extent of the powers of the manager. The opening provision of section 24 of the 1987 Act enables the Tribunal to give to the manager such powers as it considers appropriate, not limited to those given to the freeholder under the Lease.
31. Assuming that the Tribunal determines that it is appropriate to make an order, the Tribunal must also determine whether the candidate to be the manager is suitable for appointment.
32. There is a somewhat smaller body of caselaw. The Tribunal is again well aware of that and has applied the relevant caselaw in reaching this Decision. The Tribunal does not consider it necessary to set out any of the specific authorities or the principles expounded in this Decision.

### **The Lease**

33. The Lease (“the Lease”) [51- 60] is dated 26<sup>th</sup> July 1985 and grants a long term of 880 years. The Tribunal understands that the leases of the other flats in the Property were granted in the same or substantively the same terms as the Lease of the Flat. Neither of the parties to these proceedings was a contracting party.
34. In general, the provisions of the Lease are unremarkable and provide for the usual sorts of matters, including the Respondent being responsible for the Estate, and the Applicant paying towards the cost. The service charge accounting year is 25<sup>th</sup> March to 24<sup>th</sup> March
35. The more notable matters for the purpose of these proceedings are as follows:
  - i) The demise to the Applicant includes the floors and joists under the floors, the external doors and the windows and window frames (the First Schedule);
  - ii) The front garden to the Property forms part of the demise of the Applicant’s Flat (also the First Schedule);
  - iii) The Applicant is required to contribute to the costs and expenses chargeable by the Respondent as service charges and those sums are payable on demand (paragraph 8 of the Third Schedule);

- iv) Most of those contributions are of 1/4 of the costs, being in relation to costs and expenses incurred by the Respondent and included in the Sixth Schedule to the Lease (also paragraph 8 of the Third Schedule);
  - v) Other contributions are of 1/3 of the costs and expenses (paragraphs 2, 4 and 5 of the Fifth Schedule- the Lease says “clauses 2, 4 and 5” and so the reference by the Tribunal to paragraphs of those numbers means the equivalent clause as used in the Lease);
  - vi) The Applicant will pay all costs, charges and expenses incurred by the Respondent for the purpose of or incidental to forfeiture (paragraph 11 of the Third Schedule);
  - vii) The Respondent will keep the Property insured (paragraph 1 of the Fourth Schedule);
  - viii) The Respondent is also responsible for repair and maintenance including fire and electrical safety matters and cleaning (the Fifth Schedule);
  - ix) The Sixth Schedule deals with the costs incurred by the Respondent in complying with its obligations in the Fifth Schedule.
36. However, the Respondent is said to have changed its accounting year after the end of the 2021 to 2022 service charge year to the calendar year. That was not by way of a variation of the Lease and other flat leases and so relies upon ongoing agreement from the lessees.

### **The Hearing**

37. The hearing took place remotely at The Civil Justice Centre in Bristol. Mr Malvindra Singh, the Applicant, attended and represented himself. He was accompanied by family members who observed but played no active role in the hearing.
38. Ms Pearce of counsel attended for the Respondent, accompanied by a representative from her instructing solicitors. Ms Jennifer Haslam attended as a director of the Respondent and Mr Alistair Brooke as a witness from whom a detailed witness statement had been obtained [130- 135]). A skeleton argument, as termed, was provided on behalf of the Respondent. At 17 pages long, that was rather more akin to a written submission. There were more preliminary issues to address than the usual. Given those had various effects, the Tribunal considers it necessary to set those matters out.
39. The Tribunal addressed the issue of the Applicant having been said to have provided a long witness statement- 200 pages- and a considerable quantity of documents- perhaps 3000 pages- late- on 15<sup>th</sup> December 2025 rather than 11<sup>th</sup> December 2025. The Applicant said that the Respondent had rejected everything late. He asserted that the Respondent had time to read the documents and was not caused prejudice.

40. The Tribunal identified the most obvious point was that necessarily the Tribunal did not have- and had inevitably therefore not read any of- those documents. Equally, there was no realistic prospect of the Tribunal doing so during the course of the hearing. It was unlikely a witness statement and/ or a set of documents of anything like the length sent late was required or would have been of assistance. Nevertheless, if the statement and documents had been sent in time, they would have been evidence able to be relied upon, much as the Tribunal would have needed to determine how it could deal with all of that. The Tribunal is helped by focussed comments and other evidence and not by evidence, particularly lengthy evidence, which is not of direct relevance.
41. The Tribunal however, also made clear- and considers it appropriate to repeat in this Decision- that it was distinctly unimpressed by the approach taken by the Respondent or on the Respondent's behalf. The statement and other documents were late by only a modest extent. The Tribunal firmly considers that the reasonable and appropriate approach on behalf of the Respondent would have been to agree the necessary modest extension of time, which the Respondent could have done. The quantity of evidence involved would have been a separate issue to address. It follows that the approach taken was not a reasonable or appropriate one and the Tribunal so finds.
42. Ms Pearce argued that the Respondent left the door open for the Applicant to apply. That is not a sufficient answer. Nevertheless, it was apparent that the Applicant was aware that case management applications could be made, given those which he had made in the proceedings, and he had not done so. The net effect was the documents were not within the bundle and had not been considered. Further, it was said that the Respondent had prepared for the hearing on the basis of the documents provided by the Applicant in time and not others which were late and not the subject of an application to be admitted late (although that was not the most compelling argument in light of the Tribunal's determination regarding the Respondent's approach).
43. The Tribunal noted the explanation of the Applicant's case provided in his application, his witness statement as prepared in advance of one of the case management hearings [61- 66] and in a large number of communications with the Respondent and its agents about various matters. The Tribunal further considered that there were a finite number of documents which it was likely to be able to consider and which might be of assistance. The admission by that stage of additional documents would have necessitated an adjournment and the loss of a 2-day hearing with likely considerable delay until a further hearing away from the Regional Office premises and for 2 days could be arranged and also with considerable additional cost involved for the parties and the public purse. In those circumstances, the Tribunal determined that the interests of justice were best served by proceeding and on the basis of the not inconsiderable evidence available.

44. The Tribunal was not prepared to accede to the Respondent's request that the applications be struck out. It was correct to say that the Respondent lacked a statement of case or a witness statement save for his application forms and the above witness statement, but those identified the bases of the Applicant's case. The Tribunal considered that the Respondent had been sufficiently able to prepare for the hearing on that basis. The fact that the Respondent had chosen to adopt the unreasonable stance that it did as to a slightly late and presumably very full witness statement and other documents had some relevance.
45. The Tribunal records that the Skeleton Argument submitted that the allegations made were vague and that the Respondent did not know what case it had to meet but the Tribunal rejects that argument for the above reasons. The Tribunal was also confident that if any points developed during the course of the hearing, it was likely that the Respondent could be facilitated to be able to consider those to the extent required. If not, the problem could be addressed when it arose.
46. There was no attendance by any proposed manager. It necessarily followed that whatever the Tribunal decided in relation to the principal of appointing a manager, in practice no manager could be appointed at that stage. The Respondent's skeleton argument included the rather bold submission that the application for the appointment of a manager should be dismissed because of the lack of a suitable person proposed. However, the Tribunal also did not accept that. Decisions are often made to appoint but where the particular candidate is not accepted and an alternative is required to be proposed. The parties agreed in the hearing that if it were determined that a manager should be appointed, it would be appropriate to adjourn off the remainder of that application to give the parties a further, if time limited, opportunity to find a suitable candidate. The Tribunal left that to one side for the remainder of the hearing pending determination of the appropriateness of an appointment in principle.
47. An additional issue was raised with regard to the 2022 Judgement obtained by the Respondent, which would provide a final determination of any matters within those proceedings, although no document before the Tribunal made it clear what those were. The Applicant had contended that the 2022 Judgement had been set aside but no evidence of that was provided. The Tribunal further noted the PDF bundle of 38 pages of additional documents filed by the Applicant the day before the hearing commenced related to the judgement. It determined that it would admit those documents in order to assist it to establish whether the 2022 Judgement remained.
48. The Tribunal noted that an application notice had been filed with the County Court by the Applicant in June 2025 but, somewhat troublingly given that the hearing was some 8 months later, there was no evidence that the application had yet been processed and certainly none that the judgement had then been set aside. It necessarily could not be known

what the outcome would be once the application was determined but the 2022 Judgment remained, on the evidence available, and would do unless or until it may later be set aside.

49. The Tribunal therefore determined that it must for the purpose of these proceedings treat the Applicant's liability for the sums claimed in those proceedings as settled. The Tribunal was not in receipt of other papers with regard to the proceedings and had nothing to indicate any finding was made or in effect made other than that the service charges the subject of the claim were payable.
50. The Tribunal does nevertheless record its disappointment that there had not been a consent order filed in which the parties agreed to set aside, which would have been likely to have been placed for judicial attention and which would have therefore shortened the process considerably. It had been said on behalf of the Respondent in one of the case management hearings a few months ago that the Respondent would agree to the set aside and it had appeared that the Respondent's representative would assist with the preparation of a suitable consent order. It was said that the Respondent did not have a copy of the application, although if the Respondent was content to consent as had been said to the Tribunal, it was not obvious why that was an insurmountable problem. That did not alter the fact that in the circumstances which did exist, the Tribunal's hands were tied.
51. The Tribunal therefore proceeded with the substantive hearing. Importantly, the Applicant identified that there remained 6 elements of his application, to which Ms Pearce suggested a 7<sup>th</sup> of legal fees. She also suggested that 1 item, the flooring works post-dated the application. The Tribunal said that it would establish whether there had been any service charge demands in issue regarding those works and take matters from there.
52. The Tribunal received oral evidence from the Applicant. The Tribunal additionally heard oral evidence from Mr Brooke (on behalf of the Respondent. The Applicant objected to evidence being given by Mr Brooke on the basis that he was not a director of the Respondent. He was not satisfied by the authority in his favour from Mr Brooke's wife, Ms Holly Brooke in her short, written witness statement [128- 129]. The Respondent's solution to that was for Ms Halsam, a director as noted above, to give brief oral evidence solely regarding that issue. She stated that she was happy for Mr Brooke to give evidence on behalf of the Respondent. The Tribunal considered that to be quite ample and the simplest way of avoiding spending further time debating the issue. The choice of witnesses it wishes to rely upon is of course in any event a matter for the Respondent.
53. The Tribunal received closing submissions from Ms Pearce and then from Mr Singh, who still objected to Mr Brooke giving evidence.

54. The Tribunal does not set out the evidence heard or submissions received generally. Rather, it identifies such of those as are relevant to specific issues when addressing those issues.
55. For the avoidance of doubt, the Tribunal did not inspect the Property before or after the hearing. The Directions had stated that the Tribunal would not inspect unless a party requested that, no request was made and nothing arose at the hearing which led the Tribunal to conclude that an inspection was required.

### **The Service Charge (and administration charge) application**

56. The Tribunal addresses this application first, given that issues about service charges formed much of the basis for the appointment of manager application. Given the strike out of the earlier years within the application as originally made, this Decision is limited to matters raised and related to service charges from actual ones for the 2021 to 2022 service charge year and onwards.
57. The particular issues in respect of service charges raised by the Applicant crystallised to being seven- fold. They related to the validity of service charge demands, the validity of consultations under section 20 of the 1985 Act, other service charges said not to be payable, and an administration charge. The Tribunal takes them in the numerical order identified by the Applicant.
58. The Tribunal adds that the practice adopted by the Respondent-described by Ms Pearce as “long- standing convention”- has been for £200.00 per month to be demanded from each lessee, producing an overall sum of £9,600.00 for the service charge year, although it seems that- for a reason not given- the sum was varied to £120.00 per month for 2021 to 2022 and so that was the sum considered by the tribunal which made the 2022 Decision. For the avoidance of doubt, there was no suggestion that made the service charges fixed ones, simply that is how the on- account part of the variable service charges was collected.

#### i) Reserve Fund

59. The Applicant in his application asserted that the Respondent is unable to hold a reserve fund. Invoices and receipts for expenditure incurred from reserve funds did not, he argued, go to cure that. The Applicant argued in closing that the proper construction of the Lease was that a reserve was not permitted and reference was made by him to the leading case on lease construction of *Arnold v Britton* (2015) UKSC 36, of which the Tribunal is very well aware and which sets out the approach to be taken to construction. He argued that any matters of company governance were not relevant to the liability of lessees.
60. The Applicant contended in oral evidence that if there is an underspend as compared to the budget, that should not be carried forward but rather should be returned. The fund was estimated by the Applicant to

hold £70,000.00 to £80,000.00. It was abundantly clear that the Applicant had objected in his application in July 2025 to service charge demands including sums to be paid into a reserve fund. There was also reference to only since 2021 there being a reserve fund specifically and previously there being reference more to accumulated funds. However, the Tribunal did not find any practical difference for these purposes.

61. The Respondent had, in Ms Pearce's Skeleton Argument, raised lines of legal argument- an estoppel argument based upon the same approach to collecting reserves having been followed during the period in which the Applicant was a director and that the 2022 Decision had found the service charges dealt within those proceedings to be payable, and further that the Respondent was permitted to make service charge demands on account on a monthly basis. In oral submissions, Ms Pearce also expressed matters as there having been a waiver on the same bases. It was put to the Applicant that the Respondent had followed the same approach for (approximately) 20 years, although the Applicant denied having been involved in setting the budget. Mr Brooke also relied upon what he described as long- standing practice in his oral evidence.
62. The Respondent had in its written case made reference to its Articles of Association.
63. The Applicant contended that whilst he had been a director in name, he had not approved the approach to the reserve fund. He denied that being on the board of the Respondent constituted agreement. The Applicant said that many pages of documents referred to that lack of agreement, although he accepted that he had never challenged monthly payments including sums to go to the reserve- the Applicant also took no issue with monthly payment being demanded in itself. The 2022 Decision included an apparent general finding that the Applicants "would have had considerable input into the decisions", which appears from the manner in which it is expressed to be the drawing of an inference from such other evidence as then available.
64. The Tribunal considered the Respondent's argument about what else the tribunal which heard the 2022 case determined. The Applicant denied there to have been any determination that the Lease permits a reserve.
65. The Tribunal noted that paragraph 18 of the 2022 Decision to which Ms Pearce referred was a paragraph in which the tribunal in 2022 set out the Respondent's case in respect of those proceedings. The 2022 Decision was a short one and in general, service charges were determined to have been agreed to and paid by the Respondent who could not therefore challenge them. It is said in relation to the 2021 (it seems that meant 2020/ 2021) service charges that the Applicant challenged a range of items without giving details of reasons or alternative quotes. In relation to 2021/ 2022, it was said that the

tribunal in 2022 could find no issues with the proposed estimate excluding major works which it was said that the tribunal “approved”.

66. The tribunal in 2022 referred to a former agreement about the monthly collection of sums, but made no clear determination about it, only about the estimated figures overall. It is implicit that those estimated overall figures included sums to be paid to reserves but insofar as the terms of the Lease may have been considered, there is no reference to that in the 2022 Decision. Indeed, there is no mention of the terms of the Lease beyond recording that the Applicant did not dispute liability to pay  $\frac{1}{4}$  of service charges applicable to his Flat (which is not entirely correct). The Tribunal does not therefore find the 2022 Decision to have at least clearly and for reasons made a positive determination that the wording of the Lease permits the accumulation of a reserve fund. Neither given the lack of clarity did the Tribunal find the 2022 Decision of great assistance more generally. The question of whether a clear determination would have bound this Tribunal or what other account would need to have been taken of such need not be considered.
67. Nevertheless, the Applicant’s own evidence was that whilst he was not, he said, happy with the approach taken, he had gone along with the majority. He had not he said, been happy to pay but he had paid. On his own case, the Applicant had therefore acquiesced in collection of sums to be paid into reserves. His argument was unconvincing.
68. The Tribunal accepted that as a matter of fact, sums had been demanded for the reserve fund for a several years as part of the monthly payments sought and that those monthly sums had been £200.00 per month from 2015 or thereabouts onwards and that the balance had fluctuated including due to payment for works being made from the fund. All of that was documented.
69. The Tribunal determines that the Applicant had agreed to or at least acquiesced in the demanding of service charges including sums to be paid into the reserve fund for the period until July 2025. The Tribunal determines that whilst the Lease does not permit a reserve fund to be maintained, the agreement or acquiescence until July 2025 prevents the Applicant being able to challenge the service charge demands for the period of this application as not struck out. For the avoidance of doubt, the Tribunal determines that whether agreement as such on the one hand or acquiescence on the other hand is the correct term makes no difference in this case.
70. The Tribunal did not in the circumstances consider it necessary to determine an argument about estoppel specifically. The Applicant was wrong to say estoppel could not disapply lease wording if he effectively meant that the provisions of the Lease could continue to be relied upon. Any applicability or lack of it of estoppel beyond that would not, the Tribunal determines take matters further in light of the agreement or acquiescence.

71. The Applicant sought in closing to raise what the Tribunal regarded as a new matter of an additional invoice for additional works. It was difficult for the Tribunal to understand what point was being made and how it fitted with the wider situation. However, what was apparent was that evidence had been concluded earlier in the day and on the previous day. The Tribunal did not permit the Applicant to raise a new point with new evidence in effect being given in closing.
72. In the absence of persuasive argument about the amount of the demands, the Tribunal finds those to be reasonable. Accordingly, the Tribunal makes no reduction in service charges demanded for the period involved in these proceedings.
73. Various other points were made, on which the Tribunal briefly touches, although none were determinative of the question.
74. Firstly, the Tribunal agrees with the Applicant that the Respondent's Articles of Association and any other matters of company governance have entirely no relevance for these purposes. The question is not what the Respondent as a company may be able to do but rather what the Respondent is as the freeholder entitled to make demands for from the lessees under the provisions of the Lease.
75. Ms Pearce accepted that now that the Applicant has expressly objected, ending any waiver, the Respondent can no longer include in the service charge demands amounts to be paid into a reserve fund, although she argued that should in effect apply from the end of the relevant service charge year. The Tribunal considers that concession is a sensible one. The Lease plainly makes no provision for a reserve fund and so it is difficult to see how any other conclusion could be reached. It necessarily follows that as matters stand, no reserve fund can be maintained, and service charges can no longer be demanded to be paid into reserve fund. The Tribunal considers that position applies as from the service charge year after December 2025.
76. The Applicant also expressed dissatisfaction in oral evidence with the Respondent having opened a savings bank account in or about 2023, which he said he knew nothing about. The Tribunal records that Mr Brooke agreed that the account had been opened giving the reason- and a sensible reason- of being to enable interest to be obtained on the funds held. There is no relevant issue about any of that for the Tribunal to determine.
77. Neither is any determination required about the sums retained in the reserve fund currently. The Tribunal nevertheless considers that the sum accumulated in consequence of service charge demands which included payments to the reserve fund where the Applicant accepted them or acquiesced, is a sum which the Respondent is able to hold pending utilisation of the reserve fund to pay for items of major works and other matters for which a reserve fund can properly be used.

78. The Tribunal now makes what is no more than a suggestion that the Applicant and the other lessees may wish to consider the consequence of the above.
79. The purpose of a reserve fund is to enable funds to be accumulated to meet major works which can be predicted as required in the coming years. There should be a programme of planned maintenance and where there is a reserve fund there should be an aim to ensure that there is, as far as practicable, sufficient in the fund to meet the costs of major items of expenditure when they are expected to arise. That avoids unusually large service charge demands in the years when major expenditure is required. It avoids an increased prospect of lessees being unable to pay the sum demanded, of funds not being received and the works not being able to proceed because of lack of funds to meet the costs involved, to the detriment of the building and those with an interest in it. It should instead keep demands relatively even and better allow the lessees to budget.
80. Of course, if a lessee knows of a maintenance programme and likely costs in a given future year, the lessee could put to one side money in his or her own fund to ensure that the consequently large demand can be met when received. The lessee ought to do so. However, whilst that is easy to say, the Tribunal is aware that in reality such an approach is likely to be a rare one, other more immediate demands on the lessee's money being likely to take priority.
- ii) Section 20 consultation
81. The Tribunal determined that the consultation procedure followed by the Respondent had been a valid one.
82. As the Tribunal has not said anything about the law in relation to consultations in respect of major works when summarising the general law with regard to service charges and appointments of managers, the Tribunal does set out a short summary here before addressing any arguments further.
83. In general terms, a landlord must carry out a consultation in relation to what are termed major works. Those arise where the service charges to be demanded from the lessee to pay for the works exceed £250.00. Given that the total cost of the Exterior Works is identified at £120,930.00 to be paid for by only 4 flat lessees, it is stating the obvious to say that the works were major works as defined.
84. If no consultation is carried out, or not valid one, the payable service charges are limited to the above sum unless the landlord applies to the Tribunal for a determination that consultation may be dispensed with, which can be done prospectively or retrospectively, and the Tribunal grants that application.

85. The consultation process set out in Schedule 4, Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003) requires the landlord to give the tenant 3 separate notices. Each notice is required to provide certain information. The first is a notice of intention to undertake major works. In broad terms, the second is a notice of estimates providing at least 2 estimates of costs from a contractor and the third is a notice of who the landlord is contracting with. There are opportunities for the lessees to make observations and to put forward details of a contractor from whom the landlord is required to seek an estimate. Nevertheless, the decision as to with which contractor to contract is a matter for the landlord. The lessees can challenge the amount of the service charges demanded separately in the usual way.
86. The background as set out in the Respondent's case was that in 2015, the managing agents- Easton Bevan- produced a planned maintenance programme [929- 945] setting out works to the Property which it was recommended were undertaken during the course of the subsequent 10 years and at a costs estimated at that time as £110,000.00). Rather obviously that estimate could not continue to be accurate insofar as relevant costs then increased and the Tribunal can take judicial notice of the well- known increase in building costs, particularly since 2020, insofar as there is anything to which it cannot apply its expertise and its experience of the matter from innumerable other cases.
87. Further, the Respondent then in 2020 instructed Hillcrest Estate Management to assist with the section 20 consultation process in respect of decoration and repairs works, described as "the Exterior Works", which term the Tribunal will adopt. The Respondent said that the project was scaled back in comparison to the planned programme in order to reduce costs. The process was asserted to have been followed. Ms Pearce took the Respondent through the above. The Applicant expressed unhappiness about who the contract was to be awarded to and the change in scope. However, the Respondent also contended that the Exterior Works could not be undertaken as planned as payment had not been received. It was asserted that the 2022 Decision so found but the Tribunal considered it somewhat unclear whether the relevant paragraphs, which largely set out a history, included such a finding by the Tribunal or simply a statement of what the Respondent advanced as its case. Nevertheless, as correctly advanced in these proceedings on behalf of the Respondent, the 2020 process and any service charges demanded predated both the 2022 Decision and even more pertinent the 2022 Judgment in respect of service charges demanded. Hence the Tribunal could identify nothing in relation to the 2020 consultation open to it to determine even if it might otherwise have been relevant to do so. It was also the Respondent's case that it warned that delay was likely to lead to increased costs, as it seems occurred.
88. In any event, the Respondent's case was that it re- started the consultation process with a notice of intention issued in July 2022. A

challenge to the validity of that could be considered. Somewhat startlingly, it transpired that estimates were only provided in June 2024, which it will be identified was almost 2 years later. An email from Hillcrest [199] conceded that the statement of estimates had not been issued previously. Ms Pearce contended in closing that it had not been put to Mr Brooke that the Respondent was at fault for the delay, which the Tribunal accepts as far as that point goes, which is not far at all. It is abundantly clear that only in the second half of 2024 was the section 20 process completed.

89. The Work completed in Spring 2025- that at least was not in issue.
90. The Respondent blamed the Applicant for causing delay. The Tribunal understood there to be two strands to that. One, as expressed by Mr Brooke in oral evidence was that the challenge brought by the Applicant in 2021 which resulted in the 2022 Decision caused the Respondent to stop pending the outcome of the challenge. The Applicant suggested to Mr Brooke that some of the works could have continued. The Tribunal agreed that the Respondent could have continued, although did not regard it as surprising that the Respondent decided to stop in the face of proceedings.
91. The other and rather less good reason was suggested to be subsequent lack of payment by the Applicant, which the Tribunal did not consider to be appropriate, given firstly that from the evidence provided, it was at least not clear that other lessees had also paid at the time the Respondent pursued the Applicant. The Applicant took Mr Brooke to the statements of the bank account for 2021, when payments should have been made. He demonstrated no payments were shown from any lessee. Mr Brooke was at best vague in his answers, somewhat in contrast to his evidence on other matters, stating that the other lessees had paid their contributions but not venturing when that was and whether it had happened at the time of pursuing the Respondent. The Tribunal found that revealing and finds on the evidence drawn to its attention that the other lessees had not paid. In that regard, the Tribunal observes that the answer may or may not have lain in one or more document somewhere within the bundle, but neither side identified to the Tribunal where that might be.
92. Secondly, the determination below that the Respondent was not entitled to charge the cost of incurring legal costs to service charges has relevance to the state of the Applicant's account as compared to where it ought to have been in 2022 and thereabouts. It was further established that the Applicant made payments of just over £10,000 in February 2023 and £2,000.00 in March 2023 and the documentation showed was up to date with demands prior to 2024 by the time the consultation was completed, even though those reflected expenditure on legal costs. There was then a levy, as termed, on 1<sup>st</sup> October 2024 for £11,814.27, part paid by the Applicant That does not wholly detract from the fact that there have been payments late and arrears, but the picture is different to that suggested by the Respondent.

93. In any event, the fact that the Respondent via its agent did not then conclude the further consultation until 2024 and was not able to undertake the works until then had nothing discernible to do with the Applicant. The Tribunal returns to these points below.
94. Returning to the actual issue of validity, the Tribunal has considered the notices served and is content that they are valid. The lessees were given the opportunity to do the things which they are required to be able to do and given at least- indeed rather more than- the required time for that. The Tribunal finds that there was no response to the consultation from the Applicant or from any other lessee.
95. The Applicant did not accept various matters when taken through the further process by Ms Pearce. He did raise an issue about communication with Mr Benjamin Carpenter- the agent proposed as manager by the Applicant as mentioned above. It was pointed out that Mr Carpenter had been given authority by him to deal with all matters related to the Property [142], which the Tribunal finds to be very clear. The Applicant also disputed receipt of the statement of estimates- and that point had bearing on the validity of the process- although it was demonstrated by Ms Pearce and the Tribunal so finds that they had been sent to him by email [199]. The Applicant additionally said that the statement had not been given on time. He also asserted that he had not been given time to consider the tender from Bagnalls, although the Tribunal finds that he was demonstrated to have been given the time he was required to be given. The Tribunal determines that none of the above matters demonstrate any lack of validity of the section 20 process.
96. The only other point which the Tribunal can identify was potentially relevant to validity and so which the Tribunal does address is the delay with the consultation process begun in 2022, given that is the matter to which the Applicant returned. The Tribunal was mindful that there had been a long delay such that the process had taken far longer than would ordinarily be expected. However, whilst there are minimum periods which must be given to lessees to respond to notices and there are otherwise minimum timescales provided in the 1987 Act and/ or related regulations, there is no maximum period.
97. The Tribunal does not seek to preclude any possibility that delay may in an instance be so great as to have an impact but is inclined to the view that would be more likely to impact on the level of service costs being reasonable and so the level of service charges payable rather than rendering service charges not payable at all. The Tribunal does not seek to say more about a point which perhaps arises in other proceedings and would be far better answered then.
98. There was a lot more raised in respect of the major works, principally by the Applicant, but which was not relevant to the validity of the consultation process or others of the topics which the Applicant had

listed as challenges. The Tribunal, with some caution, sets out a flavour of those, although does not consider that any form part of the matters for determination.

99. Demands were made for service charges of the Applicant in October 2022 and September 2024, both post- dating the subject matter of the 2022 Decision and 2022 Judgement. It was put to the Applicant that there had been a detailed specification of works and that was sent to Mr Carpenter [947- 962].The scope of the work was said to have been agreed to be reduced in August 2024 [145] by removal of cleaning of the stonework, that having been requested by the Applicant via Mr Carpenter. The Applicant did not accept that reduced scope had been agreed, denying Mr Carpenter was his agent despite the written authority plainly given by him. The Applicant also said when that written authority was put to him that Mr Carpenter's authority did not extend to agreeing anything without checking with the Applicant first. However, the Tribunal did not accept that evidence, given the Applicant's incorrect previous assertion about lack of authority, finding that the Applicant was simply attempting to avoid the effect of Mr Carpenter indicating agreement to the works on his behalf. He additionally complained about the scope of work changing. The Applicant asserted that he himself would not have reduced the scope. The Tribunal finds that the reduced scope and the remaining scope were agreed and, in any event, had no impact on the validity of the consultation.
100. The Applicant additionally suggested there might be an issue about the standard of work, although he accepted that he had not raised such an issue. Further, there was no apparent challenge in the Applicant's case regarding the cost of the works and the consequent service charges payable, although it was said by the Applicant in the hearing that Mr Carpenter considered the work to be over- priced. No other evidence of that was provided. The Applicant also put to Mr Brooke that 2024 was some time on from 2015. However, in 2015 there had been a 10- year plan with no suggestion that all of the work should be undertaken straight away, so the time elapsed alone was not enough to sustain a challenge to cost involved. In any event the Applicant had not raised such. The Applicant also raised a point which the Tribunal understood to be that if sums had not been paid out from service charge funds for legal fees- see below as to such fees- the Respondent could have undertaken some of the major works earlier and implicitly at lower cost. However, not only was it not demonstrated that was correct but again it was about the reasonableness of costs and not about an issue identified for determination. The Tribunal did not accept enough had been raised to form even a prima facie case about the above matters, and given that they were not obviously part of the 7 identified challenges, no more need be said.
101. The Tribunal is content that it has dealt with such points as were made as could have affected the outcome of the Decision on the challenge as had been advanced.

iii) Collapse of the floor to the flat

102. It was established that there were no service charges in dispute and so there was no determination for the Tribunal to make. Various matters were mentioned about this item and quite a number of documents in the bundle related to it. The flooring works and the consultation about them were identified to post-date the period of the application.
103. As no determination is required, there is no merit in setting any of those matters out more fully or making any observations about them. Indeed, given that this item is said to be the subject of the 2025 proceedings, it is particularly sensible not to make any observations where not absolutely necessary.

iv) Roof leak

104. The Applicant complained about water leaks from the first floor flat of Ms Haslam into the Flat. However, it was agreed in oral evidence by the Applicant that the works required had been dealt with by the insurance company. He accepted that no service charges had been demanded.
105. Given that the application relates to the payability of service charges demanded, necessarily there is no determination required in respect of any matter if the Applicant has not been asked to pay charges, so again there is no merit in settling matters out mentioned in any documents more fully.

v) Administration charge and accounting

106. The Applicant identified an aspect of this item which overlapped with points above, expressed as incorrectly accounting for funds by paying into a reserve account. He referred also to what he described as “some insurance payments ..... not in service charges”, which were not service charge items or discernibly relevant to any accounting fees. When asked about other challenges, the Applicant said that he could not “pinpoint” them “right here”.
107. The Respondent’s argument was that there were no matters for determination in these proceedings before the Tribunal. Nothing said went to the sums payable.
108. There is no merit in repeating the determinations and other observations made above about the reserve fund and no other determination is required.
109. Nothing was presented by the Applicant in respect of administration fees, save for as covered by vii) below.

vi) Service charge demands- validity

110. The Tribunal considers that this is another point which can be addressed in relatively short terms.
111. The Tribunal determines that the service charge demands issued by the Respondent and challenged by the Applicant were not shown to be invalid.
112. Giving oral evidence, the Applicant was not convinced that the registered office shown on demands as the Respondents address had always aligned with the correct address at the time. However, the Applicant was unable to identify any example and said that he would forego the point.
113. The application form had queried whether there were lawful demands in relation to the charges for major works but those related to the consultation process, delays and the reserve fund, rather than to the demands themselves and those issues have been considered above.
114. The Applicant maintained in closing that if any element of service charges demanded within a demand is not payable, the whole demand falls. Ms Pearce argued, if there had been any part of the service charges demanded which could not be demanded, that would not have invalidated the demands but rather would only have meant that specific elements of the charges were not payable.
115. The Tribunal agrees with Ms Pearce. The Applicant's argument was simply wrong, as amply demonstrated by the many cases in which the Tribunal determines some service charges demanded not to be payable and others to be payable- the demanding of sums determined not to be payable does not prevent the remainder being due.

#### Legal fees

116. The application had sought the repayment of legal fees paid from the reserve fund to be repaid to the Respondent and not recovered from lessees, although that goes well beyond the jurisdiction of the Tribunal. It was apparent from various pages of bank statements in the bundle that several invoices had been rendered [1371 and various subsequent pages] and that several payments had been made from the Respondent's account in 2021 and 2022, varying from a few £00.00 to £7,560.00 on 14<sup>th</sup> March 2022.
117. The Respondent asserted that this was the only service charge item specifically identified by the Applicant in his application.
118. Ms Pearce took the Applicant to the budget for the 2021- 2022 service charge year [1234] where the estimated charges were approved in the 2022 Decision. It was said that there had subsequently been invoices for legal fees, but no sums had been demanded beyond the on- account sums. Reference was also made to a comparison of budget sums against actual sums and a note that £7298.43 of legal costs had been incurred,

which the Tribunal understands to have been in the service charge year ending 2021, but had not been included in the budget and a similar sum was anticipated for the following service charge year [1231]. The note ended “not currently known whether these can be reclaimed from Mal”. The Tribunal understands that is to say from the Applicant.

119. The Tribunal was not persuaded by the Respondent’s argument that no sums had been demanded and that was the end of the matter. The estimate was just that and could not have known the exact costs. The fact that actual service charges for the year once completed were not greater than the estimated charges does not prevent a determination by the Tribunal of the actual charges. The determination of the estimated charges being reasonable at the time they are demanded on the basis of the information then known does not mean that the actual charges will be reasonable in light of the matters charged for, including but not limited to the fact that the question of whether the works or services were of reasonable quality and the charges were reasonable having regard to the quality can be considered. If anything, the point is all the more obvious where actual charges relate to an entirely different item not within the budget at all.
120. Equally, the Tribunal considers that the legal costs are unlikely to have formed part of the 2022 Judgement where the Respondent’s case was that it had not demanded service charges specifically for legal costs.
121. The fact that other expenditure may have been lower than the sums collected and that consequently the legal costs could be paid from the service charge sums received without the requirement for an additional demand for any balance sum did not alter the fact that service costs had been incurred and that the sums demanded as service charges had paid for those. If funds had not been expended on legal costs, the overall year end service costs would have been lower and the actual service charges similarly.
122. The exact sum paid out in legal fees was less than completely clear. The Tribunal understood in the hearing the Respondent’s position to be that the relevant figure was £12,624.00, being a sum shown as paid out in 2022 in the service charge accounts for that year [218], which is the sum Ms Pearce said the Respondent had concentrated on. However, it is unclear whether that was because the Respondent relies upon the 2022 Decision as having covered the 2021 fees. As the Tribunal has made clear above, the 2022 Decision dealt with estimated service charges for 2021 where at the time no legal fees were included in the budget and so there were no estimated service charges to pay them, hence the 2022 Decision did not address the issue.
123. There was no indication the Tribunal noted that the Applicant had sought to limit his challenge to only the 2021 or 2022 figure for legal costs- indeed the application form specifically refers to all legal fees paid [36], albeit without giving a figure. The Tribunal determines that it firstly can consider the two sums referred to on the page of the

service charge accounts to which reference is made, so £7,298.00 and £12,624.00, a total of £19,922.00.

124. The Tribunal secondly notes that the budgets for the year ended 31<sup>st</sup> December 2023 [177] and 2024 [181] include sums of £1,200.00 for legal and professional fees. However, it is not clear to the Tribunal whether legal costs of some or all of that sum or any other given figure were in fact incurred. If any legal costs were incurred, the same determination would necessarily apply to those, unless in the particular instance it were to be demonstrated that the legal costs were for the purpose of or incidental to forfeiture.
125. Ms Pearce's next argument was that the provisions of the Lease enabled legal costs of ensuring compliance with the covenants to be recovered, repeating the Respondent's statement of case. Ms Pearce had also advanced an argument that a term could be implied in the Lease for business efficacy giving an ability to recover legal costs.
126. In the face of the Tribunal's indication that it was not with her on either point, Ms Pearce did not seek to press those arguments and sensibly conceded in the hearing they would not succeed. Having expressed that the Respondent's concession was sensible, it is not necessary for the Tribunal to express any view more fully. Suffice to say that the Tribunal was satisfied that legal costs claimed as service charges did not fall within the limited class able to be recovered pursuant to paragraph 11 of The Third Schedule to the Lease.
127. The Tribunal does observe that this is another matter on which the Respondent may well have the right to incur legal costs pursuant to its company constitution but that is an entirely separate matter to the ability to recover such costs as service charges.
128. It follows that this is the challenge on which the Applicant succeeds.
129. The legal costs of £19,922.00 were not service costs able to be demanded as service charges. Therefore, the £4,980.50 of service charges paid by the Applicant and used to pay ¼ of those actual service costs were not payable for that purpose (nor usable by the Respondent for that purpose).
130. The Tribunal considers that it must follow that the Applicant has paid £4,980.50- and potentially more allowing for any legal costs since 2022- more of service charges more than he ought to have. The accounting consequence goes beyond the jurisdiction of the Tribunal and so the Tribunal does not add to the point alluded to about arrears above.

### **The Appointment of a Manager application**

131. The Tribunal now turns to this application.

132. Essentially the same sort of issues as raised in relation to service charges formed the basis of this application. The Applicant additionally raised the Respondent failing to address leaks into the Flat from the flat of Ms Haslam above and delaying in addressing the Flat and other allegations about the management of the Property, including breach of fiduciary duty.
133. The Respondent's basic position as explained in Ms Pearce's Skeleton Argument was that it did not oppose the appointment of a manager as such. It was indeed said that the Respondent had approached 5 suitable potential management companies (although being a Tribunal-appointed manager is a personal appointment of an individual) but that none had expressed an interest. It was implicit that the Respondent need not go further than that. If the Tribunal was minded to make an appointment and provided further time for a candidate to be found, the Respondent asked that to be limited to 8 weeks and that the application be dismissed if a suitable candidate could not be found.
134. The Tribunal noted that the section 22 Notice served by the Applicant was rather old. It was served in 2020. The Applicant did not issue this application until 2025.
135. It stood to reason that, aside from any other matters, the position then could not be the same as that at the time of the application or otherwise more recently. However, no point was taken by the Respondent about the age of the Notice and indeed the Tribunal considers that the 1987 Act simply requires there to have been a Notice and says nothing more specific. Whilst the age of the Notice and the relevance of the matters raised, or lack of it, may have a bearing on whether to appoint a manager, it was at least not obvious that the Notice was negated by lapse of time and in the circumstances, it was not appropriate to consider the point any further.
136. In a similar vein, there was no timescale for remedial action of the matters said in the Notice to require attention but whilst that might have rendered it defective, no bar is placed on the Applicant proceeding by a defective Notice. As that point was also not raised by the Respondent, no more need be said about it.
137. It will be identified that there were unreasonable service charges charged, although not specifically demanded, by the Respondent which were not payable pursuant to the Lease. That is to say the legal costs paid from sums received from on account payments which could not under the Lease be used to pay such legal costs.
138. There were also sums demanded to be paid into a reserve fund which the Respondent was not able to maintain pursuant to the Lease. It is very relevant that the Applicant had not raised the issue until July 2025 and had made payments and then that upon the Applicant raising the point the Respondent has accepted it and has ceased to hold a reserve. Further, the Respondent does not intend to continue to demand sums

to pay into a reserve. That is plainly a change to the position complained of by the Applicant. Nevertheless, there remains the more modest point that the Respondent does not appear to have appreciated that the Lease did not provide for such a fund.

139. The Tribunal has also found above that whilst there was no defect with the section 20 consultation process from 2022 to 2024, there was significant delay in the consultation process. The management of that process was lacking. The Tribunal finds that most notable point in respect of delay in the major work being undertaken after 2022. As identified above, the Tribunal does not consider that events prior to 2022 carry any more than marginal weight at most.
140. Further, whilst the Applicant had not paid all the relevant service charges when demanded, he was not the only one who had not and some of the charges were not owed given that service costs included legal fees which were not payable. That does not mean that the Respondent was unable to pursue the Applicant for payment of sums which properly were due. However, the fact that the account was incorrect because it included sums to legal costs not payable is relevant.
141. Further, the Tribunal finds that the Applicant was treated differently to the other lessees. No reason has been advanced by the Respondent which might persuade the Tribunal that the Respondent took a fair and even-handed approach. The approach taken is notable and goes to the wider treatment of lessees and the wider approach to management. The fact that in part the Applicant may be said to have brought matters on himself by not paying is of course relevant but not a complete answer. It does not explain a lack of action against others. The Tribunal does not determine the Respondent to have breached any specific requirement of the Lease and it is at least arguable that there was a failure to comply with other duties. The Tribunal is less than impressed and determines that the matter lends some support to the appointment of a manager being just and convenient.
142. The Applicant additionally advanced other arguments which did not go to the payability of service charges but could be relevant to the question of appointment of a manager, although the Tribunal determines that they do not lend further weight to the potential appointment in the event.
143. The first was an argument about unlawfulness in respect of the works to the floor of the Flat. In principle unlawful activity would either meet one of the threshold grounds or being another reason why an appointment may be just and convenient. However, the Applicant did not demonstrate unlawfulness. Nor was it identified to the Tribunal what other breach of the Lease or other provisions was committed. The Applicant did not prove any failing in the approach taken by the Respondent with regard to this aspect.

144. There was also an argument advanced by the Applicant in the documents with regard to the water leak into his Flat from Ms Haslam's flat that she had been improperly shielded from liability by the other directors of the Respondent. Whilst it was argued in the Respondent's Skeleton Argument that was not a matter within the jurisdiction of the Tribunal, that was only correct in relation to service charges. Any matter which may render it just and convenient to appoint a manager was relevant to the appointment of a manager application. On the other hand, the Applicant did not advance anything specific about the point during the hearing and did not sufficiently demonstrate what was said to have been done by the Respondent, still less why it was a matter to which the Tribunal ought to give weight.
145. The Applicant additionally suggested to Mr Brooke in cross-examination that two pairs of invoices from contractors, for what were relatively modest works, reflected the works within them being separated to avoid the need for a section 20 consultation- the cost of each pair combined being a little over the threshold for that. Mr Brooke responded that they were in each case two separate pieces of work and the Applicant failed to persuade the Tribunal otherwise. Hence, the Tribunal found no mis- management with regard to those invoices.
146. The Tribunal determines having considered the above and the other circumstances that it is not just and convenient to appoint a manager, notwithstanding the Respondent's lack of objection to that in principle.
147. Whilst the Tribunal has accepted certain of the points advanced by the Applicant, those are relatively limited in scope. In general, the service charges have not been challenged. There was no complaint about most of the general management. The Tribunal has not found there to be wider or deeper failings. Perhaps more importantly, the Tribunal has not identified ongoing matters and matters which it considers likely to arise in the future.
148. The determination of whether an appointment is just and convenient requires an exercise of judgment by the Tribunal. It is given the power to appoint but a discretion as to whether or not to do so. Competing considerations need to be weighed. They also need to be weighed in the context of the appointment of a manager involving the removal from a freeholder of a property of rights the freeholder would otherwise enjoy.
149. The Tribunal determines that the factors which weigh in favour of an appointment do not do so nearly enough to outweigh the appropriate weight to be given to factors which weigh against the appointment. It is not appropriate to exercise the discretion so as to appoint a manager.
150. It is important for the Respondent to fully understand the provisions of the Lease and to apply them, subject to agreement from all of the lessees to the contrary. However, that is not an exhortation for the Applicant to challenge every minor matter or to seek to render matters more difficult than necessary for the Respondent- equally that

comment does not seek to suggest that the Applicant would otherwise do so.

151. Rather, the Tribunal reminds the parties that this is not a large Property with lessees spread out. There are only 4 flats and the lessees' flats are literally on top of one another. It is in the interests of all concerned to seek to get on with each other sufficiently to facilitate the efficient and effective running of the Property. That does not mean they must all be the best of friends, that is not realistic. However, they should seek to avoid conflict where possible and seek to identify where it is in their own interests and the interests of the other parties to seek to resolve issues or, at least, rub along.
152. In the event, the question of suitability of anyone specific to become the manager is not relevant.

### **Costs and Fees**

153. With regard to the applications pursuant to section 20C and paragraph 5A, that any costs incurred by the Respondent in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the Applicant pursuant to section 20C(1) of the Landlord and Tenant Act 1985. In addition, an application was made pursuant to paragraph 5A of the Commonhold and Leasehold Reform Act that the costs of the Applicant's application should not be recoverable as administration charges.
154. As to the law, Section 20C (3) of the 1985 Act, provides "the ... Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances". The Tribunal is given a wide discretion. The provisions of paragraph 5A are equivalent and for practical purposes the test to be applied to each limb of the applications that costs of the proceedings should not be recoverable is the same.
155. The provisions of section 20C were considered in *Re: SMCLLA (Freehold) Ltd's Appeal* [2014] UKUT 58, where the Upper Tribunal held that:

"although [the First-tier Tribunal] has a wide jurisdiction to make such order as it considers just and equitable in the circumstances" (at paragraph 25), "an order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances" (at paragraph 27).
156. In *Conway v Jam Factory Freehold Ltd*, [2014] 1 EGLR 111 the Deputy President Martin Rodger QC suggested that it was:

"essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those

consequences in mind when deciding on the just and equitable order to make”.

157. Whilst there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.
158. The most obvious circumstance is that the Tribunal has determined that the Lease does not permit the Respondent to recover legal costs it incurs in proceedings such as these from the lessees. Hence, any determination is effectively academic. The Tribunal accepts that in paragraph 25 of the 2022 Decision, the tribunal refused equivalent applications which might suggest that the tribunal considered legal costs to be recoverable. However, there is no reference to the relevant provision of the Lease and it seems the point was not advanced at that time, so the refusal to disallow was just that and cannot be read as any determination that costs were otherwise payable.
159. The Tribunal has determined the Applicant to be correct about previous legal costs not being payable in response to specific arguments raised about that and has determined that some other points made had a merit. However, in the main the challenges to service charges failed. In relation to the manager application, the Applicant fell some distance short of persuading the Tribunal that the appointment of a manager is just and convenient, albeit with factors which lent some support to the application.
160. It follows that if legal costs were recoverable under the provisions of the Lease, the Tribunal would have been unlikely to disallow at least some recovery. However, purely for the avoidance of doubt and having established the above, the recovery of legal and litigation costs pursuant to both section 20C and paragraph 5A is disallowed and the section 20C and paragraph 5A applications are therefore granted.
161. In terms of fees for the application, the considerations are not exactly the same. For example, the contractual rights and obligations do not apply. In contrast, the outcome is all the more relevant. Lease provisions about legal costs are not relevant.
162. As identified above, the Applicant has on the whole failed. The legal costs success is for a not at all insignificant sum but rather more modest in contrast to the nature of the proceedings more generally. There have been some criticisms of the Respondent, but they have only gone so far in relation to the challenges made. The Tribunal has considered whether some fees of the service charge application ought to be borne by the Respondent but has concluded taking matters in the round that they should not.
163. The Applicant must therefore bear the fees paid.
164. Finally, the Respondent’s skeleton argument indicated that the Respondent wished to seek an order that the Applicant pay costs

incurred by the Respondent in respect of the proceedings on the basis of unreasonableness. The Tribunal did not consider it appropriate to seek to hear in respect of such an application in advance of this Decision being provided.

165. The Tribunal has not then given consideration to the potential application in the absence of receiving the parties' cases about such. If the Respondent wishes to pursue such an application having considered this Decision, the Respondent should inform the Tribunal. Appropriate Directions for the provision of submissions and other documents by the parties can then be given.

### **Right to Appeal**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.