12034

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/17UK/LIS/2015/0037**
Property	:	**Apartment 17, Bretby Hall Bretby Burton upon Trent DE15 0QQ**
Applicant	:	**Mr Christopher Pratt**
Representative	:	**Messrs Brady Solicitors**
Respondent	:	**Bretby Hall Management Company Limited**
Representative		**Mr A J Harper**
Type of Applications	:	**An Application under Section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charge** **An Application under section 20C of the Landlord and Tenant Act 1985, that the Tribunal makes an Order that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be taken into account in determining the amount of any service charges payable by the Applicant**
Tribunal Members	:	**V Ward BSc (Hons) FRICS (Chairman)** **P Hawksworth Lawyer**
Date of Decision	:	**10 May 2016**

DECISION

Introduction

1. Two Applications were made by Mr Christopher Pratt ("the Applicant"), the leaseholder of Apartment 17, Bretby Hall, Bretby Burton upon Trent DE15 0QQ ("the Property"). The first Application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") was for a determination as to the payability and reasonableness of service charges for the service charge years 2009, 2010, 2011, 2013, 2014 and 2015 (years ending 31 December) and the second was an Application under Section 20C of the Landlord and Tenant Act 1985, that the Tribunal makes an Order that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be taken into account in determining the amount of any service charges payable by the Applicant.

2. The Applicant was represented throughout the proceedings by Mr Sam Andrews of Brady Solicitors whilst the Respondent was represented by Mr Tony Harper who is the Company Secretary of the Respondent.

3. The Applicant holds the residue of a lease ("the Lease") in respect of the Property, dated 11 April 2003 for a term of 125 years (less three days) from the date of the lease. The ground rent is £150 per annum.

4. The Respondent is the Manager under the terms of the Lease.

The Inspection

5. The Tribunal carried out an inspection of the Property on 1 October 2015. Present at the inspection were Mrs Adele Pratt, wife of the Applicant, and, for the Respondent, Mr Tim Lawrence of Apartment 28 Bretby Hall, a board member of the Respondent and Ms Lynne Murtagh formerly of Apartment 8 Bretby Hall, a former board member.

6. The Tribunal found that the Property was a ground floor apartment with the following accommodation:

   Lobby, hall, lounge, kitchen, double bedroom with ensuite bathroom and at mezzanine level; master bedroom with ensuite bathroom, bedroom and shower room.

   Externally the Property benefits from a private terrace and 2 car parking spaces.

7. Bretby Hall is a former Grade II listed country house which has now been converted into 30 apartments of varying sizes. There is car parking within the

central courtyard and also outside the main building. Houses have also been constructed in the grounds of the Hall.

The Tribunal inspected the communal parts of the development relevant to this matter.

The Hearing

8. The matter was originally scheduled to be dealt with as a paper determination but following the inspection and further consideration of the matter, the Tribunal decided that it needed oral explanations and representations from the parties to enable the Tribunal to fully understand many of the points in dispute. Thus, a hearing was held on 11 February 2016 at Stafford Magistrates Court. Present at the hearing were the Applicant and Mrs Pratt, Mr Andrews and for the Respondent, Mr Harper, Mr Lawrence and Ms Murtagh.

9. The Applicant's submissions both at the Hearing and in writing are summarised as below. The Applicant had provided a Scott Schedule in order to particularise specific items.

The Applicant's Submissions

10. The Applicant's statement initially gave some background to the dispute which appeared to have been going on for some considerable time. The Applicant was a board member of the Respondent, however due to issues regarding the manner in which the development was being run; he resigned his position as a Director in June 2010. In March and May 2011 on the instructions of the Applicant, his then Solicitors, Messrs Adcocks, wrote to the Respondent advising that consultation processes required under Section 20 of the Landlord & Tenant Act 1985 had been triggered on numerous occasions but had not been adhered to. A number of other issues were raised in that correspondence including the Respondent's failure to provide budgets. In December of that year, the Applicant invited the Royal Institution of Chartered Surveyors (RICS) to appoint an expert to determine the service charge. In seeking to refer the matter to an RICS appointed expert, the Applicant was endeavouring to utilise the arbitration provisions contained in the Lease. The first Determination by an RICS expert ("the Initial Determination) was prepared by C S Edwards FRICS and was completed in August 2012. The Applicant duly made payment of half of the cost of the expert's fees for the Initial Determination, however, the Respondent did not make a payment for the remaining half and accordingly, due to non-payment of fees in full, the signed and concluded version of the Initial Determination was not released. Unfortunately the surveyor, Mr Edwards was taken ill and later passed away and, as a result the Initial Determination was never released.

11. A second expert, Mr Terry Corns FRICS MCIArb was appointed on the request of the Applicant, and in April 2014 he completed his Determination ("The RICS Determination"). The RICS Determination confirmed the Applicant's concerns that the service charge accounts were not being properly managed and indicated that the Applicant should receive a significant re-credit to his service charge account. A copy of the RICS Determination was provided to the Tribunal.

12. In addition, Mr Corns determined that the Respondent should be responsible for his fees in the sum of £11,664. At the time of the Applicant's submission these fees had not been paid by the Respondent and the Applicant thus contended that had no choice but to pay the fee in full which he had done.

13. The Applicant told the Tribunal that he had attempted to agree the terms of the RICS Determination with the Respondent but no agreement had been forthcoming. The Applicant indicated that he had made other efforts including mediation to resolve his differences with the Respondent, all to no avail. The Applicant stated that the failure of settlement efforts left him with no choice but to make the present Applications to the Tribunal.

The RICS Determination

14. The Applicant relied on certain aspects of the RICS Determination summarised in the following paragraphs, whilst the Tribunal sets out its findings later in this Decision.

15. Conflict of Interest: Mr Corns found Mr Harper's position as company secretary of the management company and also as an owner of properties at Bretby Hall disquieting and felt that there was a conflict of interest. He was of the opinion that the management for the development is best in the hands of an independent firm of managing agents in order to demonstrate and ensure an unbiased and transparent arrangement in the interests of both sides.

16. Sinking Fund: It was noted by Mr Corns that under the terms of the Lease the landlord was not entitled to provide a sinking fund, only a reserve fund. He further understood that the landlord accepted this issue and that funds that are held for future expenditure should be held as a reserve fund rather than specifically identified as sinking funds for defined items. From Mr Corns interpretation of the service charge account, it appeared that the sinking fund and or reserve fund were being used inappropriately simply to top up the service charge account from time to time rather than applying it to specifically identify long term costs. His concluding view was that it was more an accounting anomaly as a result of poor budgeting rather than inappropriate expenditure.

17. Fire Escape: During Mr Corns inspection of Bretby Hall, he noted that the existing fire escape drop-down ladder appeared to have been moved from its original hinged position retracted into a ceiling recess and ready to be lowered by someone from above in the event of an emergency, to its current position vertically on the side wall. It was clear to him that an even an able-bodied person would have difficulty in using the ladder in its position at that time. In his opinion, this meant that there was effectively no emergency fire escape access at this location by way of exit through the trap door to the lower landing. Concluding, he could see no over-riding need to build a new stairway and door as opposed to simply re-siting the ladder correctly in a position that would operate satisfactorily. Accordingly, he considered the work actually done to be an improvement, which was not an expense that could be passed through the service charge.

18. Masonry Works: From the information supplied to him, Mr Corns considered that following the masonry fall, there was an unfortunate sequence of events where responsibilities amongst a group of contractors, advisors and managers, including the managing agent had become blurred and unclear, resulting in a lack of effective management of the whole process. His opinion was that the original workmanship was faulty and financial responsibility must fall at the door of the original contractor, his professional team or the project manager of the work or their insurers or any or all of these parties. If these parties could not be brought to account then he was of the opinion that the responsibility must lie with the managing agent who is ultimately responsible for the management of the whole process, or ultimately, the landlord himself. He determined that costs relating to the masonry fall should not be considered service charge items.

Major Works/Qualifying Long Term Agreement Consultation Process

19. In the opinion of the Applicant, the Respondent has not carried out the proper consultation as required by Section 20 of the Act. Despite the Respondent being informed by Messrs Adcocks Solicitors in early 2011 that the Consultation Regulations were not being complied with, the Respondent had continued to fail to comply. The Applicant states that the highest percentage of service charge payable by a leaseholder is 10.8% and accordingly, any works where the total cost is £2,314.81 will be qualifying works and any long term agreements where the total cost is over £925.92 will be qualifying long term agreements.

20. The Applicant further comments that the Respondent has employed a "consolidated" consultation process. The Tribunal is advised that this typically involves a covering letter with the annual budget which sets out the Respondent's expenditure. Copies of these letters were included with the Applicant's statement. These letters, dependent upon the issue concerned, took various forms, on some occasions discussing in detail specific works projects whilst others took a more general approach of works planned to be carried out and

budgetary amounts. Letters from May 2011 were headed "NOTICE Given Under Section 20 Landlord & Tenant Act 1985".

Accounting Procedure

21. The Applicant states that Paragraph 13 of the Sixth Schedule of the Lease entitles the Respondent to create a reserve fund for items of future expenditure. However, the Applicant states that these funds appear to have been used to cover shortfalls in expenditure created as a result of poor budgeting and overspend. The Applicant further states that the use of a reserve fund in this manner has made reconciliation of the budget and annual accounts difficult. The Lease does not refer to any provision for a sinking fund, however, according to the Applicant, sinking funds have been employed by the Respondent for the years 2009 – 2014 as confirmed by the annual accounts. The Applicant stated that whilst he generally supports the use of the sinking fund, he does not consider that it should be used as a means of balancing the budget.

Improvements and Other Works Not Covered by the Lease

22. The Applicant contends that works relating to individual apartments have been charged to leaseholders by the service charge when the cost of such works should have been solely charged to the individual apartment owners concerned. These are specified within the relevant sections of the Scott Schedule.

23. The Applicant believes water charges included in the service charge relate to the water in individual apartments. The Lease provides in the Sixth Schedule (Building Costs) that the water charges relating to the building can be included in the Service Charge; however, this does not include the water used by the individual apartments. The Applicant is aware that each apartment has its own meter and accordingly, considers that each leaseholder should pay for their own water consumption and this should not be claimed through the service charge.

Proportion of Service Charge and Insurance Contribution

24. The Applicant quoted the following extracts from the Lease:

Paragraph 2 of the Seventh Schedule provides that:

"If due to any re-planning of the layout of the development of the development or the building by the lessor it should at any time become necessary or equitable to do so the Manager or lessor shall recalculate on an equitable basis the percentage appropriate to all parties comprising the Development or Building (As the case may be) and to notify the lessees accordingly and in such cases as from the date specified in the new Notice the

new proportion notified to the lessee in respect of the devised premises shall be substituted for those set out in Paragraph 1 (of the Seventh Schedule)

Paragraph 1 of the Seventh Schedule provides that:

"The lessee's proportion means the amount attributable to the maintenance expenses in connection with the matters mentioned in the Sixth Schedule"

25. The Applicant pointed out that the lessee's proportion in respect of the Property is defined in the recitals of the Lease as 6.16%. The Respondent had provided the Applicant and the Tribunal with a schedule showing the area in square feet of each apartment. This document, which was included with the Applicant's submissions, shows that Apartment 17 equates to 5.07% of the total square footage for the development. This document also provides that the Applicant is paying 5.64% of the insurance contributions and 6.16% of the service charge contributions.

26. The Applicant invited the Tribunal to order that the lessee's proportion should be varied to equate with the percentages set out in the Applicant's Schedule under the provisions set out in Paragraph 2 of the Seventh Schedule above, as it was necessary and equitable to do so. According to the Applicant, the lessee's proportion should be adjusted to reflect the correct square footage of the apartments.

Section 20C Application

27. The Applicant considers that the Tribunal should make an order under Section 20C of the Act due to the fact that he has made repeated attempts to assist the Respondent in the correct administration of the service charges including providing legal advice at his own expense. In addition, the Respondent failed to pay its half share of the costs of the Initial Determination thus, preventing its release and additionally, failed to make payment of any fees towards the RICS Determination.

28. The Applicant says that in pre-action correspondence he has made efforts to solve this matter and it would be unreasonable, in the Applicant's opinion, that given his significant expense so far, the Respondent includes its fees in the service charge.

The Respondent's Submissions

29. The Respondent's submissions in writing and also at the hearing were as follows.

30. The Respondent confirmed that there was disagreement between the Applicant and other board members culminating in the Applicant's resignation from the Board.

The RICS Determination

31. Referring to the RICS Determination, the Respondent contends that the decision in *Windermere Marina Village Limited v Wild [2014]* UKUT 163 ("*Marina Village*") renders this document void as between the parties (that is to say, not binding on the Respondent). According to the Respondent, the RICS Determination reflects nothing more than its author's opinion. The Respondent also believes that the RICS Determination cannot be accorded evidential value by the Tribunal in these proceedings, because it is based on an error of law comprising a misconstruction of the contract represented by the Lease and further, that the RICS Determination contains express admissions of bias. The Tribunal was referred to *Mercury Communications Limited v Director General of Telecommunications* [1996] 1 WLR 48, *Homepace Limited v Sita Southeast Limited* [2008] EWCA Civ 1, *Thorne v Courtier* [2011] EWCA Civ 460 and *Persimmon Homes Limited v Woodford Land Limited* [2011] EWHC 3109 (Ch). The Respondent maintains that both RICS surveyors exceeded their admittedly ill-defined terms of reference and failed to obtain from the Applicant a definitive list of the disputed charges.

Major Works/Qualifying Long Term Agreement Consultation Process

32. The Respondent accepts that the Applicant's proportion of 6.16% implies thresholds for Section 20 Consultation over major works and long term agreements of £4058.44 and £1623.38 respectively.

33. Providing background, the Respondent states that prior to 2009, service charge requests were based on budgets prepared by the former managing agent of the development (appointed by the developer) made without reference to Section 20 of the Act. The Respondent states that the Applicant was part of the fully attended board meeting of the Respondent of December 2008 that decided without dissent to issue the 2009 service charge request with a letter explaining the principle features of the budget and drawing attention to major expenditure. Noting that Section 20 was primarily intended to protect lessees from unreasonable lessors who did not reside in the development, the Respondent told the Tribunal that the board saw this as a sensible response to the low consultation thresholds. The Respondent also stated that the board took the view that its aim was to highlight major expenditure above the thresholds of £7,500 and £3,000 that would have applied had the criteria been the average lessee's proportion. This procedure was followed for the 2010 budget. This method was also used for consulting leaseholders during the masonry fall

collapse in February 2011. This clearly required consultation on expenditures far in excess of the statutory or even the self-imposed consultation limit and prompted the letter of 28 February 2011 which Messrs Adcock Solicitors, employed by the Applicant, acknowledged, complied with the requirements of Section 20. This manner of consultation was continued for its Notices of 18 April, 21 May, 24 June and 22 August 2011.

34. According to the Respondent, however, a letter of 17 April 2011 from the then current board chairman, which attempted to provide a less formulaic account of the events, provoked a response from Messrs Adcocks dated 20 May 2011, which stated, the Applicant, "*would adopt a pragmatic approach. They do not intend to apply for an LVT Determination.....where there has been a general attempt to follow the consultation procedure.*" Continuing, the Respondent pointed out that by way of letter of 21 May 2011, it invited leaseholder comment on the detail of the budget revision following the west wing masonry fall. That comment was further fully reported in the Section 20 Notice of 24 June 2011. This also outlined that the board had resolved to adopt a process of planning for the annual service charge budget that incorporated both consultation through Section 20 Notices and the discussions of the draft budget at the Annual General Meeting. This is the origin of what has become known as "consolidated consultation process" with which the Applicant engaged in June and November 2011.

35. In response to the Applicant's contention that no notices of estimates were provided, the Respondent confirms that contracts were awarded to those submitting the lowest bids. It also draws attention to the disclosure of estimates in Section 20 Notices of 6 March, 13 April and 10 October 2012.

36. The Respondent acknowledges that the Applicant raised several objections during the "consolidated consultation process", however, until October 2014 the Respondent stated that it was not apparent that the Applicant objected to the "consolidated consultation process" itself. In October 2014, Messrs Brady Solicitors (whom the Tribunal assumes succeeded Messrs Adcocks) acting on behalf of the Applicant, refuted any suggestions that Messrs Adcock's letter of 20 May 2011 constituted an undertaking on their client's part. It was clear therefore, according to the Respondent, that from this point in time the Applicant's rejection of the "consolidated consultation process" might form a substantial element of an application such as the one now being determined. The Respondent states that with the benefit of hindsight, too much weight may have been attached by it to the Adcock's letter of May 2011 and to the Applicant's actual involvement in the "consolidated consultation process" during 2011 – 2013. The Respondent further conceded that, essentially, seeing the primary importance of Section 20 as protection of lessees from external, non- resident leaseholders, it may also have shown too little concern for strict compliance with

the Consultation Regulations in the past but that, nevertheless, it asked the Tribunal to recognise its consistent attempts to consult Bretby Hall leaseholders on its management of service charge funds and the potential volume of individual notices that would have been required had the procedure not been consolidated.

37. According to the Respondent, the 2015 Budget includes several items where the Applicant's contribution to major works would exceed the £250 limit and more than £100 to expenditure under long term agreements. The effect of restricting the Applicant's contribution to these limits would be a total reduction on his 2015 service charge of some £1,807 of which £1,228 would be attributable to the exceptional costs of the stone masonry repairs arising from the 2011 masonry fall.

38. The Respondent also stated that the Budget also includes £8,400 for the fee paid to the managing agent under the Sixth Schedule General Costs, which the Applicant has challenged. According to the Respondent, the managing agent, Bridgford Limited, was appointed with effect from 1 January 2008 at a monthly fee of £550. In 2007, the previous managing agent, Labyrinth Properties Limited (now part of the Countrywide Group), was paid £6,811 equivalent to £567 a month. Both agents also served as company secretary and managed both expenditure and service charge collection. The Respondent stated that Bridgford Limited's contract is for a fixed fee inclusive of the correspondence and management costs involved in these processes. According to the Respondent, in common with many managing agents, the Labyrinth contracts provided for additional fees allowing for expenditure in excess of a certain limit and for administration charges for letters sent on debt collection or company secretary matters. Since 2008, the Respondent stated that the fee paid to Bridgford Limited has increased to £650 a month in January 2011 and £700 a month in January 2015.

39. The Respondent explains that Bridgford Limited is owned and operated by Mr & Mrs Harper who live in Apartment 27 Bretby Hall and own the leasehold interest in this Apartment and also Apartment 10, they are therefore members of the Respondent. Mr Harper said that he holds BA (Econ) and LLB degrees and in 2001 retired from a career in major companies, his final role being in management of service quality in Scottish Power PLC. He said that Mrs Harper had held a succession of administrative manager roles including that of Thomas Cook call centre manager and an office manager for the Cheshire Advisory Service before retiring. Bridgford Limited has three other managing agent roles in the Bretby Hall development and three leaseholder management company clients in Mickleover, Derbyshire. According to Mr Harper, apart from the Applicant and his wife, all other lessees of Bretby Hall have been satisfied with the service provided by Bridgford Limited and the contractors engaged by it.

40. The Respondent stated that certified accounts for 2007, the last year of Labyrinth stewardship show service charge arrears of £9,905 and the 2008 accounts show arrears of £9,700. In the 2014 accounts, the service charge arrears were £349.57 and at the time the submissions for the Tribunal were prepared, the only overdue payment was £1,711.50 from a single debtor.

Accounting Procedure

41. The Respondent accepts that the Sixth Schedule provides for reserve funds rather than a sinking fund. The 2006 accounts revealed an overall deficit in reserves of £1,022 shown as a larger deficit on a general reserve partly offset by £3,000 sinking fund and £333 tree reserve. According to the Respondent the leaseholder Directors did not see these as material distinctions. On their appointment, the independent accountants reflected these historic descriptions and also followed the common practice of allocating substantial and irregular outlays to the sinking fund which covered shifts of service charges into that fund. The Respondent said that once the accountants realised that painting was a rolling programme generally involving sizable annual outlays, this part of funding through the sinking fund was discontinued. The various components of reserve funds were amalgamated into a single general reserve from 2011 onwards. The Respondent states that these reporting irregularities had no effect on the actual expenditures.

42. The Respondent considers that its use of service charge to manage the masonry fall is justified under the authority granted under paragraph 13 of the Sixth Schedule of the Lease – General Costs. The Respondent states that the modest sums that it had been possible to put into reserves were used for necessary but not always unexpected works. The Respondent considers that demanding balancing charges would have implied that there were reserve funds for the longer term that needed to be conserved. This would have been unreasonable and misleading due to the fact that there were no long term reserves.

43. The Respondent stated that Paragraphs 6 and 7 of the Seventh Schedule of the Lease and the statutory provisions governing service charge accounting require the annual preparation of estimates and accounts and certification of those accounts by issuing accounts on an annual basis. The Respondent states that this has been done. It has also made the relevant supporting papers available for the Applicant for three months in each of the last several years.

Improvements and Other Works Not Covered by the Lease

44. The Respondent considers that the Lease allows recovery through the service charge of prudently incurred costs of reasonable improvements under two criteria:

a) Where the provision is for a purpose expressly permitted by the lease e.g. CCTV, security or fire issues under paragraph 5 (b) of the Sixth Schedule - Estate Costs and

b) Those which the Manager may " *consider necessary or desirable for the carrying out of acts and things mentioned in this Schedule*" (paragraph 6 of Sixth Schedule - Building Costs) or thinks it is "*reasonable to provide*" (paragraph 11 of Sixth Schedule - General Costs).

In short, the Respondent believes that the issue is not whether costs were incurred for improvement but whether the costs were reasonably incurred for one of the limited number of expressly permitted purposes derived from specific paragraphs of the Sixth Schedule.

45. The Respondent then addressed specific items identified in the Scott Schedule. Close circuit television (CCTV) coverage is agreed to be of benefit both to the Applicant and the Hall leaseholders generally. The provision of CCTV systems is expressly recognised in in paragraph 5 (b) of the Sixth Schedule - Estate Costs, as a component of the maintenance expenses recoverable from the lessee's proportion. The Respondent believes that the expenditure to provide a useful extension of the CCTV coverage at reasonable cost.

46. Some items within the Schedule relating to fire alarm systems, cover the cost of scheduled service visits, call outs and replacement of failed components. The Respondent states that most of Bretby Hall is two hundred years old with a stone shell with less substantial internal walls and floors, hence fire is potentially liable to spread rapidly around the building if it becomes established. This is the reasoning behind the extensive fire alarm system linked to the Fire & Rescue Service with the alarm sounders spread around the Hall to alert residents.

47. The Respondent then detailed information relating to the Scott Schedule items under the heading of Fire Escape. These costs were incurred to replace an escape route from the fourth floor level of the turrets and roof terraces forming part of Apartments 4, 6 and 7. There was originally a drop-down ladder in place which had failed and was not repairable. The Respondent identified an alternative route and spent £1,530 on architect's plans to facilitate Listed Building and Building Control Consent for an ideal replacement facility. The Applicant argued for a 'like for like' replacement of the drop-down ladder and provided a quotation showing a likely cost of some £3,000 for such a replacement. In the event the Respondent spent £16 on copies of plans required to secure the necessary consents for a modified purchase of its own alternative plan which was then implemented at a cost of £5,978.40 identified in the Scott Schedule as Item 87. The Respondent believes these costs to be recoverable through the lessee's proportion under the paragraph 10 and 11 of the Sixth Schedule - General Costs.

The Respondent also considers that paragraph 6 of this Schedule is relevant because the modified escape route, as now installed, assists access to the upper levels and roof of the building, facilitating maintenance and repair of obligations under the Sixth Schedule generally. The Respondent requests that in determining the reasonableness of this particular item, the Tribunal recognises that the drop-down ladder required users to operate a heavy steel trap door and when lowered obstructed another fire escape that is no longer compromised by the revised installation.

48. The Respondent states items regarding water charges cover usage in both the communal areas and also the individual apartments. The collective payment of all charges was established from the date of grant of the first Hall lease because of the local water authority – South Staffs' - refusal to operate 31 water services accounts for the building. The water authority invoices on the basis of a single meter. The board of the Respondent reviewed the procedure in 2009. It concluded that providing a collective water procurement which they consider to be permitted under paragraph 11 of the Sixth Schedule – General Costs was more sensible than seeking to obtain the operating cost and bad debt risk of introducing variable charges into service charge demands, which would have to rely on certain intrusive access to the individual apartments' water meters. The Applicant saw this view endorsed by the Respondent's AGM in November 2009 and the Tribunal is asked to consider it when determining the reasonableness of the expenditure.

49. The Scott Schedule contains three items under the heading 'Stone Masonry' which concerns expenditure rising from the collapse of a substantial section of the Hall's west wing in February 2011. The defect arose from original design faults which lead to an inherent structural defect. This was repaired and the cost covered through the lessee's proportion in line with the Sixth Schedule. Unfortunately the Respondent said it was not possible to recover the costs through insurance or by way of third party liability. Accordingly the costs not being recovered otherwise, they became a charge to be recovered through the service charge. The Respondent states that the reasoning set out in the RICS Determination is clearly wrong. The Respondent also directs the Tribunal to Section 20 Notices of the 18 April, 21 May, 24 June and 22 August 2011 to indicate that the relevant costs were disclosed and the contract placed with the lowest cost contractor.

Proportion of Service Charge and Insurance Contribution

50. The Applicant indicated that he believes that the lessee's proportion set out in the Lease, should be adjusted, but in response the Respondent refers to Paragraph 2 of the Seventh Schedule of the Lease where it refers to *"any re-planning of the layout of the development or the building"*. The Respondent contends that any

alteration is only possible in the event of a re-planning and as there has been no such re-planning, no alteration of the lessee's proportion is permitted by the Lease and the Respondent drew the Tribunal's attention to *Schilling v Canary Riverside Development Properties Limited* (2005 LRX 126/2005).

51. The Respondent acknowledges that the Applicant's Apartment 17 covers 5.07% of the Hall floor space but notes that the demised premises (defined in the Third Schedule) of the Lease includes a garage and the Fourth Schedule of the Lease grants exclusive use of a terrace additional to the floor space of the Applicant's apartment. Additionally, the ceiling heights of the apartments vary substantially throughout the Hall and hence differences between the insurance proportions and the floor space potentialities will be reflective of these facts.

52. The Respondent states that the Scott Schedule includes five challenges towards maintenance of the lifts on the grounds that the Applicant does not have access to the lifts. However, lift maintenance is expressly included in the maintenance expenses under the Sixth Schedule of the Lease - Buildings Costs Paragraph 6 and is recoverable through the lessee's proportion. The Respondent considers that the Applicant's attempt to exclude costs related to the lift amounts to an indirect attempt to revise the lessee's proportion contrary to *Schilling*.

Section 20C Application

53. The Respondent indicates that its direct costs in relation to this application are likely to be modest, essentially copying charges of approximately £200. The Respondent believes these costs to be recoverable under the Lease - Sixth Schedule - General Costs so they should be able to be recovered from the leaseholders generally including the Applicant.

54. The Applicant's Scott Schedule indicates at item number 84, that the Respondent's legal costs in respect of a dispute with the Applicant should be excluded from the service charge account. These costs arose from a prospective County Court action on the part of the Applicant seeking to recover from the Respondent the payment to Mr Corns for the RICS Determination. They are not costs related to this Application and do not fall for determination under Section 20C.

55. The Respondent repeated its assertion that the RICS Determination is not binding on the parties and thus, of no contractual effect and it again referred to the decision in *Marina Village* to support this argument. The Applicant's payment for the Determination was payment for a consideration which has wholly failed, and is, therefore, a matter for the Applicant and Mr Corns' company. It is not an expense on the service charge account and of no relevance to the present application.

The Law

56. The Landlord and Tenant Act 1985 provides:

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A Liability to pay service charges: jurisdiction

1) An application may be made to a leasehold valuation tribunal [now the First-tier Tribunal Property Chamber (Residential Property)] for a determination whether a service charge is payable and, if it is, as to –

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

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

3) An application may also be made to a leasehold valuation tribunal [First-tier Tribunal] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs, and if it would, as to –

a) the person by whom it is payable,
b) the person to whom it is payable,

c) *the amount which is payable,*
d) *the date at or by which it is payable, and*
e) *the manner in which it is payable.*

4) *No Applications under subsection (1) or (3) may be made in respect of a matter which –*

a) *has been agreed or admitted by the tenant;*
b) *has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;*
c) *has been the subject of determination by a court, or*
d) *has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.*

5) *But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.*

Section 20c Limitation of service charges: costs of proceedings

1) *A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before....a leasehold valuation tribunal....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the application.*

The Tribunal's Determination

57. The Tribunal considered all of the evidence submitted by the Parties oral, written and summarised above, and its findings in respect of the same are as under.

The RICS Determination

58. Paragraph 4 of the Seventh Schedule of the Lease contains the following dispute resolution mechanism:

"If the Lessee shall at any time during the Term object to any item of the Maintenance Expenses as being unreasonable or to the insurance matters mentioned in the Ninth Schedule being insufficient then the matter in dispute shall be determined by a person appointed for the purpose by the president for the time being of the Royal Institution of Chartered Surveyors whose decision shall bind both parties and whose costs shall be borne by whoever that said person shall decide...."

59. Under this provision the Applicant referred the disputed service charge items to an RICS appointed expert who was first, Mr Christopher Edwards and secondly (after Mr Edwards' subsequent incapacity and death), Mr Terry Corns of Messrs Lambert Smith Hampton. The Tribunal had to consider the status of the findings of Mr Corns in the RICS Determination and whether it binds the parties and thus, prevents the Tribunal from considering the matters raised in those proceedings.

60. Section 27A (6) of the Act provides that:

> *"An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination-*
>
> > *(a) in a particular manner, or*
> > *(b) on particular evidence*
>
> *of any question which may be the subject of an application under subsection (1) or (3)"*

61. The matters contained in Mr Corns' determination were the assessment of items identified under in service charge years 2009-2012 together with the budgeted figures for 2013 and 2014. Annexed to his determination is a schedule which contains his determination of the figures that he considers are appropriate costs for the Maintenance Expenses for those above periods.

62. In the Tribunal's view, the matters which Mr Corns pronounced upon were clearly matters which could and should have been determined by a Tribunal under Section 27 (A) (1) and (3) of the Act. As such, by virtue of the operation of Section 27 (A) (6) above, paragraph 4 of the Seventh Schedule of the Lease is void as is any purported determination made by triggering the provisions of that paragraph. The Respondent referred the Tribunal to the case of *Marina Village Ltd* and the Tribunal adopts the reasoning set forth in that case, particularly paragraph 41, which states as follows:

> *"In a statutory anti-avoidance provision such as section 27A (6) an agreement will "purport to" provide for an outcome if it has the effect of providing for that outcome. In Joseph v Joseph (1967) Ch 78 the Court of Appeal held that in Section 38 (1), Landlord and Tenant Act 1954 the expression "purports to preclude the tenant from making an application or request" for a new tenancy means "has the effect of precluding the tenant" so that an agreement for the tenant to surrender their tenancy at a future date was void. The same broad approach is appropriate in the case of Section 27A (6) so that the question in the case of any particular agreement by a tenant is whether it has the effect of providing for the determination of any question*

which could be the subject of an application under sub-section (1) or (3) "in a particular manner" or "on particular evidence". Paragraph 4 of the 7th Schedule attempts, in effect, to deter or preclude either the Landlord or Tenant from making a Section 27A application. It is a provision more appropriate for inclusion in a lease of commercial premises not a lease of a residential flat where service charge issues could and should have been anticipated to arise at some stage during the currency of the Lease.

63. Thus the Tribunal is not bound by Mr Corns' determination and accords no status to it. Whilst Mr Corns is a surveyor, his determination cannot either be afforded the status of expert evidence as far as the Tribunal is concerned, because the Tribunal has had no sight of the instructions he was given and there are allegations by the Respondent that he has gone beyond such instructions as he was given in any event, and most importantly, he has not been subject to any cross-examination on his determination either by the Tribunal or the Respondent.

64. It follows therefore that the fees of Mr Corns should not be included in the service charge. The proper forum for considering those fees is the County Court since paragraph 4 of the Seventh Schedule imposes a contractual provision on the parties that costs shall be borne by whomsoever the expert shall decide. Given that the fees were incurred in providing a determination that is of no practical benefit to the parties, because it contravened Section 27A (6), the fees were not reasonably incurred for the purposes of Section 19(1) (a) of the Act. Thus, as the Applicant has paid Mr Corns' fees and seeks to recover the same under the contractual provisions of the Lease from the Respondent, the jurisdiction for the resolution of that dispute lies with the County Court but for the purpose of this application, those fees are not recoverable as service charge item.

65. With final reference to the RICS Determination, the Tribunal, at the beginning of the hearing told the parties that it was of the view set out above i.e. that it infringes Section 27(6) of the Act and is void. This view was accepted by Mr Andrews for the Applicant who also accepted that whilst the RICS Determination had some evidential value, it could not be afforded the status of an expert's report.

Major Works/Qualifying Long Term Agreement Consultation Process

66. The Tribunal then considered, as to whether or not the consultation procedures had been correctly followed.

67. Section 20 of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are collectively

known as the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). There is a statutory maximum that a lessee has to pay by way of a contribution to "Qualifying Works" (defined under Section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, Section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250. A Qualifying Long-Term Agreement is an agreement entered into by, in this case, the management company, for a period of more than 12 months, whereby the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100 including VAT. In a development with varying service charge contributions, all leaseholders should be consulted if any single leaseholder has to pay more than £100 in one year.

68. There are essentially the following stages or series of steps in the consultation process, namely the Pre- Tender stage; Notice of Intention; the Tender stage; Notification of Proposals including estimates and in some cases a final stage advising the leaseholders that the contract has been placed and the reasons behind the same.

69. The Notice of Intention should include the following:

a) A statement as to the intention to carry out the works or of the services to be provided;
b) A description of the works that are to be carried out or the services that are to be provided;
c) A statement as to why it is necessary to carry out the works or provide the proposed services;
d) An invitation to make written observations in relation to the proposals and details of where those observations are to be addressed to;
e) Leaseholders are to be invited within 30 days from the date of the Notice of Intention, to nominate the name of a person from whom the landlord should try to obtain estimates.

70. The second stage, Notification of Proposals should include the following:

a) A statement that it is given pursuant to the Notice of Intention;
b) Details of at least two of the estimates received and indicate the reasons behind the selected bid and contractor;
c) Information as to where all estimates can be inspected and an invitation to make observations within a 30 day period and
d) A summary of the written observations received after the first notice of the response to the same.

71. In some cases a third stage letter is required but not where the contract has been awarded to

a) A nominated contractor;
b) The party submitting the lowest tender.

72. The Tribunal finds that the Respondent did not fully comply with the Regulations. Whilst of the many letters that were sent headed "Notice Given Under Section 20 Landlord and Tenant Act 1985" some could be considered loosely to have fulfilled the role of the initial Notice of Intention, others were of a more general nature and the second stage – Notification of Proposals, does not appear to have been fulfilled at all. The Tribunal has no power to overlook or waive non-compliance nor to sanction partial compliance, hence without the correct procedure having taken place, non-compliance with the Regulations has occurred. At the hearing, the Respondent acknowledged that the formal consultation procedures had not been followed.

73. Section 20 ZA (1) of the 1985 Act gives the Tribunal power to exercise dispensatory discretion when applications come before it to dispense with compliance with the Regulations as they do with some regularity. The significance of this dispensatory discretion is that it would not have been included or added to the Act in the first place, if the legislature did not intend, as a primary matter, that strict compliance with the Regulations is to take place in every case and thus, to avoid the triviality threshold referred to below taking effect, dispensation must be obtained. In other words, in the absence of an application for dispensation, the Tribunal has no power to waive or overlook non-compliance with the Regulations. No application for dispensation was made in this case. In accordance with the guidance contained in *Warrior Quay v Joachim* [2008] LRX/42/2006 ("Warrior Quay"), the Tribunal asked the Respondent at the hearing if it intended to make an application for dispensation. The Tribunal was told in unequivocal terms that no such application would be made.

74. In respect of Qualifying Long Term Agreements (QLTAs), the Tribunal notes that this issue was considered in detail in *Paddington Walk Management Ltd v Governors of Peabody Trust* heard by Her Honour Judge Marshall QC in the Central London County Court in April 2009 (Case No: CHY08440). As this was a County Court decision it does not carry any weight as a precedent but the Tribunal has not been able to find guidance from the Upper Tribunal or a higher court on this point nor did the parties refer the Tribunal to any relevant cases. Additionally, the Tribunal understands that in view of the standing of HH Judge Marshall, this decision is of particular value and the Tribunal understands that it has been quoted within a number of subsequent LVT determinations. The agreement referred to in the above case was entered into on 1 June 2006:

"for an initial period of one year from 1 June 2006 and will continue on a year-to-year basis with the right to termination by either party on giving three months' written notice at any time".

In determining that an agreement for a year certain and then from year to year to continue subject to not being terminated is not "an agreement for a term of more than 12 months", HH Judge Marshall firstly expressed her surprise that she could not find any relevant authority and secondly made the statement that she reached this conclusion *"with a little hesitation"*. The Tribunal adopts the reasoning set out in Paddington Walk in this case.

75. Taking this principle forward, therefore, the Tribunal determines the following in respect of the various contracts:

75.1 Management Contract: The management agreement commenced on 1 January 2008 and continued in force until 30 September 2008, thereafter until terminated at any time by the client company giving 90 days' notice in writing to the agent or by the agent giving 180 days' notice in writing to the client's company. So if the agent gave notice the agreement would be of approximately 12 months duration but if the Respondent gave notice it would be roughly 15 months duration. The Tribunal construes this agreement as having a term certain of only 9 months and as such on balance declines to allocate it as a QLTA and as such, no consultation was needed under the Regulations.

75.2 Cleaning: The term certain is only a period of four weeks hence this is not considered a QLTA and no consultation was needed.

75.3 Caretaking: No term certain hence this is not considered a QLTA and no consultation was needed.

75.4 Grounds Maintenance: The term certain for this contract is for the period from January 2013 – December 2015 inclusive. This is, therefore, a QLTA and as such, strict compliance with the Regulations should have been taken place or an application for dispensation made.

75.5 Window Cleaning: The term certain for this contract is from May 2011 – April 2013 inclusive. This is, therefore, a QLTA and the same comments apply as for 74.4 above.

75.6 Electricity: This is not for a term certain of more than twelve months and, therefore, is not a QLTA and no consultation was needed.

75.7 Lift: This is not for a term certain of more than twelve months and, therefore, is not a QLTA and no consultation was needed.

76. With the Scott Schedule attached to this Decision, the Tribunal has indicated where in respect of qualifying works the consultation regulations have been breached and the amount limited to £250 in respect of major works and £100 in respect of QLTAs.

Accounting Procedure

77. The Tribunal notes that on the face of it the Lease refers to a reserve fund but not a sinking fund. The term "reserve fund" is used traditionally in relation to a fund created for the purpose of equalising across accounting periods demands made on the tenant in respect of items of expenditure which, whilst recurring on a regular basis, tend to vary in amount from period to period. On the other hand, a "sinking fund" is a fund accumulated to pay for major repairs or the repair or renewal of major items of plant and equipment. Leases often contain specific provisions permitting the establishing of such funds but even if they do not, landlords may be entitled to establish such a fund or funds. In this case the accountants failed to make clear which items were to be applied to which fund. In a building such as Bretby Hall, both reserve funds and sinking funds are essential in the view of the Tribunal, and the Tribunal considers that the power to create both funds was in the mind of the draftsman of the Lease by the reference in clause 13 of The Sixth Schedule (General Costs) of the Lease to *"reserve fund or funds for items of expenditure to be or expected to be incurred at any time during the Term"*. The Tribunal notes the absence of capital letters in "reserve fund" and the use of the words "fund or funds". Thus, the power to create more than one fund was envisaged and the Tribunal thus construes the Lease as permitting the establishment of both a reserve and a sinking fund to assist in the efficient management of the Hall. Thus, the Tribunal declines to disallow items of expenditure which may have been mis-described or mis-allocated as reserve funds when they should have been sinking funds and vice versa but it expects in the future clear distinctions to be shown in the accounts so that lessees such as the Applicant can clearly see which expenditure has been allocated to which fund.

Improvements and Other Works Not Covered by the Lease

78. With regard to door entry systems, CCTV and fire alarms and equipment, the Tribunal finds the costs under these headings allowable under paragraph 5 (b) of the Sixth Schedule – Estate Costs - which states:

"provision of rental repair maintenance and renewal of CCTV and other security or fire prevention systems or services."

Or under paragraph 6 of the Sixth Schedule – Building Costs - as follows:

> *"Providing, inspecting, maintaining, renting, renewing, repairing, reinstating, replacing and insuring the fire fighting appliances (if any), communal telecommunications reception apparatus, electronic door entry system (s) this and any such other equipment relating to the Building (if any) by way of contract or otherwise as the Manager may from time to time consider necessary or desirable for carrying out the acts and things mentioned in this Schedule."*

79. In respect of the fire escape, whilst the Tribunal considers there to be little justification for the reorganisation of the fire escape in question and the consequent costs, it considers that it is in the Manager's remit to carry out such works even if the benefit may be only marginal due to the danger of fire in a building such as Bretby Hall.

80. Considering water charges, the Tribunal notes Paragraph 16 of the Sixth Schedule of the lease - General costs - is as follows:

> *"All of the expenses (if any) incurred by the manager in and about the maintenance and proper and convenient management and running of the Development including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the building or any other part of the Development (except insofar as the cost thereof is recoverable under any insurance policy for the time being or from a third party who is or who may be liable therefore) an interest paid on any borrowed by the Manager to defray any expenses incurred by it and specifying this Schedule any costs imposed by the Manager in accordance with Paragraph 4 of the Seventh Schedule and legal or other costs reasonably and properly incurred by the Manager and otherwise not recovered and taken or defended proceedings (including any arbitration) arising out of any lease of any part of the Development or claim by or against any lessee or tenant thereof or by any third party against the Manager as owner/lessee or occupier of any part of the Development."*

The Tribunal considers that this gives authority for the Respondent to have acted as it did with regards to the water charges and whilst it might prejudice apartments that are occupied infrequently, it presents a solution to a difficult logistical problem.

Proportion of Service Charge and Insurance Contribution

81. The Applicant contends that it is necessary and equitable for the Respondent to re-calculate the lessee's proportion and to use the proportions set out in the Schedule provided by the Applicant. The Applicant considers that his present proportion is unfair and considers that it is necessary and equitable for it to be re-calculated. The Tribunal declines to do so for the reasons set out below.

82. In *Schilling* the applicants in that case considered that the share of Estate and Car park expenditure to be allocated amongst the under-lessees was unfair. The judgement of His Honour Michael Rich QC stated, amongst other matters, as follows:

> *"In the Applicant's statement of case it was asserted that "a service charge must be reasonable under section 19 of the 1985 Act". That is not what the Section provides. Costs are to be taken into account "only to the extent that they are reasonably incurred" but if reasonably incurred they fall to be apportioned in accordance with the terms of the lease...."*

83. The principle established in *Schilling* was reviewed and endorsed in Windermere Marina Village Ltd where it was stated:

> *"The decision in Schilling demonstrates that section 19(1) provides no relief to a tenant who has agreed a fixed apportionment of service charges even if viewed objectively that apportionment is unfair or unreasonable. The same is true of section 19(2) in relation to service charges payable on account. Neither statutory provision has anything to do with apportionment"*

84. In cases where, as in the present case, the proportion is fixed by the Lease the only ways that proportion can itself be varied would be (a) by consensual agreement between the lessor and lessee (which is not applicable in the present case as there is no such agreement nor can the same be inferred by the conduct of the parties) or (b) by a variation made by a court or tribunal under the Landlord and Tenant Act 1987 (see for example sections 35 and 37) – this has no application to the present case as no application to vary under the 1987 Act is before the Tribunal or under any variation mechanism in the Lease.

85. The Lease at Paragraph 2 Seventh Schedule enables recalculation, that is to say a variation of the lessee's proportion *"if due to any re-planning of the layout of the Development or the Building it should at any time become necessary or equitable to do so...."*

86. The Tribunal is not satisfied that any re-planning has taken place such as to make it necessary or equitable to vary the lessee's proportion. The Tribunal has some

sympathy for the Applicant and the Schedule it provided but in a building such as Bretby Hall, the Tribunal considers it essential that if the proportions payable by lessees are to be corrected then that correction must be applied to all the relevant lessees in the development and that would involve consensual agreement of all or a 1987 Act application. Therefore, the Tribunal declines to order any variation of the lessee's proportion.

87. Similarly, the Respondent is obliged to maintain the lift under paragraph 6 of the Sixth Schedule – Building Costs of the Lease. This provision therefore obliges the lessee to pay for the cost of the lift even if it is no benefit to him as there is no mechanism within the lease for his proportion to be adjusted to take into account of any facilities that he does not have use of. Again the only way that provision can be varied would by the agreement, under the 1987 Act or by a mechanism contained in the Lease. There is no such mechanism. The lessee's proportion as set out in the Lease and the costs which the lessee covenants to contribute towards by paying the Service Charge would have been set out in the draft lease documentation provided to the lessee's solicitors prior to exchange of contracts for the granting of the lease being concluded. The lessee, therefore, had ample opportunity to assess the worth of the bargain he was being offered as reflected in the terms of the lease. He could have attempted to renegotiate the lessee's proportion and or the service charge costs before exchanging contracts or completing the lease. If such negotiations had been unsuccessful then he would have been able to withdraw from the transaction prior to exchange. Subject to the comments made above about the possibility of variation, the Applicant is stuck with the bargain he agreed to when the Lease was completed, however, unfair in some respects that may be.

88. In respect of managing agent's fees, the maximum generally allowed by Tribunals in service charge cases equates to approximately £180 plus VAT per property per annum. The fees charged by the Respondent exceed this amount. The Tribunal heard evidence from Mr Lawrence and Ms Murtagh, that lessees were happy with the performance of Bridgford Ltd, and Mr and Mrs Harper in particular, certainly in comparison with the previous agents employed. Bretby Hall would present a challenge even to professional managing agents, hence the Tribunal does not have an issue with allowing the maximum as quoted above *per se,* however, there are other factors to consider in this case. The first is that there is a clear conflict of interest; Mr and Mrs Harper are on both sides of the contractual arrangement for managing Bretby Hall. Secondly, whilst acknowledging the Harpers' proficiency in other areas, they do not appear to hold any formal property qualifications. The clearest example of this lack of knowledge is the failure to consult properly or to submit dispensation applications. To summarise, the Tribunal's view on these points is that the agents fees in any one year are to be limited to a maximum of £5400 plus VAT and secondly the Tribunal, so far as it has power to do so, directs that the Respondent should give strong consideration

to employing an independent professional managing agent. Even for an entity such as Bretby Hall, there is no reason why a good professional agent assisted by an active board of leaseholder Directors cannot manage the development in a proficient manner.

Section 20C Application

89. The second Application before the Tribunal is for an order in accordance with Section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

90. The guidance given in previous cases is to the effect that an order under Section 20C is to deprive the landlord of a property right and it should be exercised sparingly, see *Veena SA v Cheong_Lands Tribunal* [2003] 1 EGLR 175. However, in this case the Applicant has enjoyed some success in his challenge to items in dispute such that it would not be just and equitable to allow the Respondent to recover all of its costs of these proceedings via the service charge. Similarly, the Respondent has enjoyed significant success in resisting some of the Applicant's challenges, and to reflect that success the Respondent should be able to recover a proportion of its costs.

91. Accordingly, the section 20C application succeeds but only in part and the Respondent may only recover 25% (twenty five per cent) of its total costs of these proceedings from the Applicant via the service charge.

Appeal

92. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Vernon Ward
Chairman

First-tier Tribunal Property Chamber (Residential Property)

Case Reference: **BIR/17UK/LIS/2015/0037**
Applicant: **Christopher Pratt**
Respondent: **Bretby Hall Management Company Limited**
Property Address: **Apartment 17, Bretby Hall, Burton upon Trent, Derbyshire DE15 0QQ**

Scott Schedule incorporating Tribunal's Decision

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Agreed Yes/No	Tribunal's Decision
2009 Service Charge Accounts						
1	Door and gate entry	£3,182.58	No Section 20 consultation	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) Four unrelated outlays, none being Qualifying Works under Section 20. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed. See paragraph 77 of Decision.
2	Fire Alarm Systems	£3,978.08	(1) No Section 20 consultation (2) Improvements, not covered under the repair/renewal covenants of the lease. The amount was reduced to £2,150.15 in the RICS Determination (see Exhibit 2 of the Applicant's exhibits to Statement of Case). (3) Applicant has reviewed the	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) The £1,828 excluded in the (void) RICS Determination was for replacement of	No	Costs allowed. See paragraph 77 of Decision.

			invoices provided in detail, the following relate to works in individual apartments: a. Replacement control panels in apartment 7 - £799.25. b. Replace 10 sets of SLA Batteries (amount unclear) c. C4arry out 6 monthly maintenance of devices in apartments 1,2,3,4,5,6,7,19,20,22: £563.50 d. To connect apartments 9,10,12,14,15,16 on to main ziton fire system: £1,154.03 e. Call out on fault on smoke detector in apartment 4 (amount unclear)	ADT components by open access equivalents. (3) Of the balance, £1,042 covered scheduled service visits and £1,108 was for callouts and replacement of failed units. (4) Facility provided under Sixth Schedule, Estate Costs, Paragraph 5(b) and General Costs, Paragraphs 10 and 11. (5) The Applicant's Portion of the expenditure was less than £250.		
3	CCTV Repairs	£672.00	Reduced to £345.00 in the RICS Determination (see Exhibit 2 of the Applicant's exhibits to Statement of Case). ~£327 is specific to the Applicant's apartment.	(1) The RICS Determination is void. The Applicant re-charged the £327 to the Respondent as part of a jointly financed addition to CCTV coverage. (2) Facility provided under Sixth Schedule, Estate Costs, Paragraph 5(b).	No	Accepted by Applicant.
4	Lift and telephone maintenance	£4,035.62	(1) The Applicant does not have access to the lifts, which serve certain apartments. Access is granted by keys, which are only	(1) Lift maintenance is expressly included in the Maintenance	No	Costs allowed. See paragraph 86 of Decision.

			given to the leaseholders to the particular apartments (2) No Section 20 consultation	Expenses under Sixth Schedule, Building Costs Paragraph 6 recoverable through the Lessee's Proportion. (2) The Applicant's Portion of the expenditure was less than £250. (3) The costs arose under a long-term contract terminated at its 2012 break point.		
5	Caretaker and cleaning	£9,083.73	No Section 20 consultation Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) All but c. £300 on holiday cover and materials was spent on salary costs.	No	Costs allowed. See paragraphs 74.2 and 74.3 of Decision.
6	Window cleaning	£3,960.00	No Section 20 consultation Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) The contract was not at this time a Qualifying Long Term Agreement. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.5 and 75 of Decision.

7	Gardening	£5,940.54	No Section 20 consultation Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) The contract was not at this time a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.4 and 75 of Decision.
8	Communal lighting	£3,053.27	No Section 20 consultation was completed	(1) This expenditure was for communal areas electricity. (2) Notified by Respondent's December 2008 letter to leaseholders. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed. See paragraph 74.6 of Decision.
9	Management fee	£6,600.00	Management fee is unreasonable given the level of service provided. The managing agent is not a professional agent.	See Paragraphs 39 to 41 of the Respondent's Statement of Case.	No	Total management fee in any one year to be a maximum of £5400 plus VAT at the appropriate rate. See paragraph 87.
10	Transfer to sinking fund	£13,900.00	(1) The lease does not allow for a sinking fund (see Exhibit 2 of the Applicant's exhibits to Statement of Case). (2) The sinking fund is used in lieu of a balancing charge, which is not in accordance with good practice or the terms of the lease. (3) No Section 20 notice has been provided for G M Davies invoice £8,740.00, see the RICS Determination (see Exhibit 2 of	(1) Exhibit 2 of the Applicant's exhibits to Statement of Case (The RICS Determination) is void. (2) The certifying Accountants stopped allocating painting to the sinking fund once they realised it was an annual outlay. (3) Notified by Respondent's December 2008 letter to leaseholders.	No	Costs allowed see paragraph 76.

			the Applicant's exhibits to Statement of Case).			
11	Transfer to tree fund	£1,000.00	The lease does not allow for a sinking fund for specific items.	The historically established tree fund was incorporated into the general reserves in 2011.	No	Costs allowed see paragraph 76.
12	Painting	£10,533.03	(1) Paid for from sinking fund. (2) No Section 20 consultation was completed (3) No Section 20 notice has been provided for G M Davies invoice £8,740.00, see the RICS Determination (see Exhibit 2 of the Applicant's exhibits to Statement of Case).	(1) The certifying Accountants stopped allocating painting to the sinking fund once they realised it was an annual outlay. (2) Notified by Respondent's December 2008 letter to leaseholders.	No	Costs in respect of the Applicant limited to £250 including VAT in any one service charge year. See paragraphs 71 and 75 of Decision.
13	Water	£3078.62	This lease does not allow for water utilised by individual apartments to be claimed through the service charge. Each apartment has a water meter. The Applicant's water meter is located within the apartment. See Paragraph 26 of the Applicant's Statement of Case.	(1) Facility provided under Sixth Schedule, General Costs, Paragraph 11. (2) See Paragraph 22 of the Respondent's Statement of Case. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed see paragraph 79
2010 Service Charge Accounts						
14	Cleaning communal areas	£3,144.01	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Notified by Respondent's December 2009 letter to leaseholders. (2) Payments were made to three different cleaning contractors after the salary-based caretaking role was ended. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed. See paragraph 74.2 of Decision.
15	Caretaking	£2,699.64	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) A six-month test contract was placed after the salary-based	No	Costs allowed. See paragraph 74.3 of Decision

				caretaking role was ended. (3) The Applicant's Portion of the expenditure was less than £250.		
16	Gardening	£5,664.61	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) The contract became a Qualifying Long Term Agreement from 2010.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.4 and 75
17	Window cleaning	£3,510.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Notified by Respondent's December 2008 letter to leaseholders. (2) The contract was not at this time a Qualifying Long Term Agreement. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.5 and 75 of Decision.
18	Lift and telephone maintenance	£4,277.25	(1) The Applicant does not have access to the lifts, which serve certain apartments. Access is granted by keys, which are only given to the leaseholders to the particular apartments (2) No Section 20 consultation	(1) Lift maintenance is expressly included in the Maintenance Expenses under Sixth Schedule, Building Costs Paragraph 6 recoverable through the Lessee's Proportion. (2) Notified by Respondent's December 2009 letter to leaseholders. (3) The costs arose under a long-term contract terminated at its 2012 break point.	No	Costs in respect of the Applicant limited to a maximum of £250 including VAT. See paragraphs 75 and 86 of Decision.
19	Painting	£14,261.55	No Section 20 consultation was completed	Notified by Respondent's December 2009 letter to leaseholders.	No	Costs in respect of the Applicant limited to £250 including VAT in any one service charge year. See paragraphs 71 and 75 of Decision.

20	Stonemasonry /brickwork	£4,691.78	No Section 20 consultation was completed	There were five individual repairs not comprising a programme of Qualifying Works under Section 20.	No	Costs Allowed.
21	Drains and gutter repairs	£5,752.50	No Section 20 consultation was completed	There were 11 individual repairs not comprising a programme of Qualifying Works under Section 20.	No	Costs Allowed.
22	Roof repairs	£2,172.00	No Section 20 consultation was completed	Expenditures did not meet the Section 20 threshold.	No	Costs Allowed.
23	Fire alarm systems	£2,294.72	1. No Section 20 consultation was completed 2. Improvements not covered under the repair/renewal covenants of the lease. 3. Work was carried out in individual apartments a. Monthly services & supply and install of batteries: £690.14 b. Fire alarm fault in Apartment 15: £148.05 c. Fire alarm fault in Apartment 11: £190.35 Respondent to confirm whether any further work was carried out in individual apartments.	(1) Notified by Respondent's December 2009 letter to leaseholders. (2) Facility provided under Sixth Schedule, Estate Costs, Paragraph 5(b) and General Costs, Paragraph 11. (3) Expense covered scheduled service visits, callouts and replacement of failed units.	No	Costs allowed. See paragraph 77 of Decision.
24	General repairs	£6,643.14	Further details required of work carried out are required. No Section 20 consultation was completed in relation to these works.	There were c. 20 individual repairs plus minor materials purchases not comprising a programme of Qualifying Works under Section 20.	No	Costs Allowed.
25	Professional fees – hall condition survey	£3,613.13	No Section 20 consultation was completed.	(1) Inspection is expressly included in the Maintenance Expenses under Sixth Schedule, Building Costs Paragraph 1 recoverable through the Lessee's Proportion.	No	Costs Allowed.

				(2) The Applicant's Portion of the expenditure was less than £250.		
26	Management fee	£6,570.00	Management fee is unreasonable given the level of service provided. The managing agent is not a professional agent.	See Paragraphs 39 to 41 of the Respondent's Statement of Case.	No	Total management fee in any one year to be a maximum of £5400 plus VAT at the appropriate rate. See paragraph 87.
27	Fire safety systems	£1,078.49	(1) No Section 20 consultation was completed (2) Improvements, not covered under the repair/renewal covenants of the lease. (3) Work was carried out in individual apartments . In apartments - £1,056.56	(1) Notified by Respondent's December 2009 letter to leaseholders. (2) Facility provided under Sixth Schedule, General Costs Paragraphs 10 and 11. (3) The expenditure was for replacement of ADT components by open access equivalents.	No	Costs allowed. See paragraph 77 of Decision.
28	Emergency lighting	£2,034.32	No Section 20 consultation was completed.	There were two individual repairs not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed. See paragraph 77 of Decision.
29	Transfer from sinking fund	£6,153.24	(1) The lease does not allow for a sinking fund (see Exhibit 2 of the Applicant's exhibits to Statement of Case). (2) The sinking fund is used in lieu of a balancing charge, which is not in accordance with good practice or the terms of the lease.	(1) The certifying Accountants have discontinued the use of the term "sinking fund". (2) Reserve funds are expressly included in the Maintenance Expenses under Sixth Schedule, General Costs Paragraph 13 recoverable through the Lessee's Proportion. (3) The reserves were used to reduce the 2010 deficit to a level covered by interest and notice fees received.	No	Costs allowed see paragraph 76.

30	Transfer to tree fund	£1,000.00	The lease does not allow for a sinking fund for specific items, see paragraph 22 of the Applicant's statement of Case.	The historically established tree fund was incorporated into the general reserves in 2011.	No	Costs allowed see paragraph 76.
31	Water	£2516.66	This lease does not allow for water utilised by individual apartments to be claimed through the service charge. Each apartment has a water meter. The Applicant's water meter is located within the apartment. See Paragraph 26 of the Applicant's Statement of Case.	(1) Facility provided under Sixth Schedule, General Costs, Paragraph 11. (2) See Paragraph 22 of the Respondent's Statement of Case. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed see paragraph 79
32	Roof repairs	£2,172.00	No Section 20 consultation was completed.	Expenditures did not meet the Section 20 threshold.	No	Costs Allowed.
33	CCTV Extension	£1343.25		Provided under Sixth Schedule, Estate Costs, Paragraph 5(b).	No	Accepted by Applicants.
2011 Service Charge Accounts						
34	Cleaning communal areas	£2,894.66	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Covered by the Section 20 Notices of May and June 2011- not a Qualifying Long Term Agreement (2) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed. See paragraph 74.2 of Decision.
35	Caretaking	£4,225.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of May and June 2011- not a Qualifying Long Term Agreement.	No	Costs allowed. See paragraph 74.3 of Decision
36	Gardening	£5,514.71	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of May and June 2011- was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.4 and 75
37	Window cleaning	£3,420.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying	Covered by the Section 20 Notices of May and June 2011- was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one

			Long Term Agreements			service charge year. See paragraphs 74.5 and 75 of Decision.
38	Lift and telephone maintenance	£4,846.85	(1) The Applicant does not have access to the lifts, which serve certain apartments. Access is granted by keys, which are only given to the leaseholders to the particular apartments (2) No Section 20 consultation	(1) Lift maintenance is expressly included in the Maintenance Expenses under Sixth Schedule, Building Costs Paragraph 6 recoverable through the Lessee's Proportion. (2) Covered by the Section 20 Notices of May and June 2011. (3) The costs arose under a long-term contract terminated at its 2012 break point.	No	Costs in respect of the Applicant limited to a maximum of £250 including VAT. See paragraphs 75 and 86 of Decision.
39	Painting	£2,500.80	No Section 20 consultation was completed	Covered by the Section 20 Notices of May and June 2011.	No	Costs Allowed.
40	Drains and gutter repairs	£2,726.24	No Section 20 consultation was completed	There were two individual repairs not comprising a programme of Qualifying Works under Section 20.	No	Costs Allowed.
41	Roof repairs	£2,172.00	No Section 20 consultation was completed	This duplicates a 2010 entry; the 2011 certified Accounts show expenditure of £140.00 under this heading.	No	Costs Allowed.
42	Fire alarm systems	£2,022.72	(1) No Section 20 consultation was completed (2) Improvements, not covered under the repair/renewal. £618 to be excluded. (see page 6 of the Applicant's exhibits to Statement of Case).covenants of the lease (3) Work was carried out in individual apartments. a. Replacement within apartments 11,22,29: £2,021.4	(1) Covered by the Section 20 Notices of May and June 2011. (2) Facility provided under Sixth Schedule, Estate Costs, Paragraph 5(b) and General Costs Paragraph 11. (3) Expense covered scheduled service visits, callouts and replacement of failed units.	No	Costs allowed. See paragraph 77 of Decision.
43	Management fee	£7,800.00	Management fee is unreasonable given the level of service provided.	See Paragraphs 39 to 41 of the Respondent's Statement of Case.	No	Total management fee in any one year to be a

			The managing agent is not a professional agent. Significant increase on 2010 figure without justification.			maximum of £5400 plus VAT at the appropriate rate. See paragraph 87.
44	Fire safety systems	£2,435.40	(1) No Section 20 consultation was completed (2) Improvements, not covered under the repair/renewal. All expenses to be excluded, as per The RICS Determination (see Exhibit 2 of the Applicant's exhibits to Statement of Case).covenants of the lease (3) Work was carried out in individual apartments.	(1) There were two individual unit replacements not comprising a programme of Qualifying Works under Section 20. (2) Facility provided under Sixth Schedule, General Costs Paragraphs 10 and 11. (3) The RICS Determination is void.	No	Costs allowed. See paragraph 77 of Decision.
45	Fire escape	£1,530.00	These works were an improvement and were not included in the Respondent's repair/maintain covenants, see RICS Determination at Exhibit 2 to Applicant's Statement of Case.	(1) Facility provided under Sixth Schedule, General Costs, Paragraphs 6, 10 and 11. (2) The RICS Determination is void.	No	Costs allowed. See paragraph 78 of Decision.
46	Stonemasonry	£20,585.08	(1) No Section 20 consultation was carried out (2) The works were carried out to rectify an original design fault, the leaseholder should not have been charged for this work, as determined in The RICS Determination (see Exhibit 2 of the applicant's exhibits to Statement of Case).	(1) The Section 20 Notice of August 2011 applies. (2) Rectification of inherent faults is expressly included in the Maintenance Expenses under Sixth Schedule, General Costs Paragraph 16 recoverable through the Lessee's Proportion. (3) The RICS Determination is void.	No	Costs in respect of the Applicant limited to £250 including VAT in any one service charge year. See paragraphs 71 and 75 of Decision.
47	Water	£3015.95	This lease does not allow for water utilised by individual apartments to be claimed through the service charge. Each apartment has a water meter. The Applicant's water meter is located within the apartment. See Paragraph 26 of the Applicant's	(1) Facility provided under Sixth Schedule, General Costs, Paragraph 11. (2) See Paragraph 22 of the Respondent's Statement of Case. (3) The Applicant's Portion of	No	Costs allowed see paragraph 79

			Statement of Case.	the expenditure was less than £250.		
2012 Service Charge Accounts						
48	Cleaning communal areas	£2,909.74	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Covered by the Section 20 Notices of October and December 2011- not a Qualifying Long Term Agreement (2) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed. See paragraph 74.2 of Decision.
49	Caretaking	£4,394.94	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2011- not a Qualifying Long Term Agreement.	No	Costs allowed. See paragraph 74.3 of Decision
50	Gardening	£5,412.72	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2011- was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.4 and 75
51	Window cleaning	£3,420.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2011- was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.5 and 75 of Decision.
52	Lift and telephone maintenance	£3,598.38	(1) The Applicant does not have access to the lifts, which serve certain apartments. Access is granted by keys, which are only given to the leaseholders to the particular apartments (2) No Section 20 consultation	(1) Lift maintenance is expressly included in the Maintenance Expenses under Sixth Schedule, Building Costs Paragraph 6 recoverable through the Lessee's Proportion. (2) Covered by the Section 20 Notices of October and December 2011. (3) The costs largely arose under a long-term contract terminated at its mid-2012 break point.	No	Costs allowed. See paragraph 86 of Decision.

53	General repairs	£3738.43	Further details required of work carried out are required. No Section 20 consultation was completed in relation to these works.	There were eight individual repairs plus minor materials purchases not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed.
54	Management fees	£7,800.00	Management fee is unreasonable given the level of service provided. The managing agent is not a professional agent.	See Paragraphs 39 to 41 of the Respondent's Statement of Case.	No	Total management fee in any one year to be a maximum of £5400 plus VAT at the appropriate rate. See paragraph 87.
55	Fire alarm system	£1,804.42	Respondent to confirm what work was carried out within apartments.	(1) Covered by the Section 20 Notices of October and December 2011. (2) Facility provided under Sixth Schedule, Estate Costs, Paragraph 5(b) and General Costs Paragraph 11. (3) Expense covered scheduled service visits, callouts and replacement of failed units.	No	Costs allowed. See paragraph 77 of Decision.
56	Fire safety systems	£3,029.52	(1) No Section 20 consultation was completed (2) Improvements, not covered under the repair/renewal covenants of the lease (3) Work was carried out in individual apartments: a. Apartments 27, 28 and 14: £2,021.40 Respondent to confirm whether any additional work was carried out in individual apartments.	(1) Covered by the Section 20 Notices of October and December 2011. (2) Facility provided under Sixth Schedule, General Costs Paragraphs 10 and 11. (3) Two visits to replace failed individual units not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed. See paragraph 77 of Decision.
57	Fire escape	£16.00	(1) These works were an improvement and were not included in the Respondent's repair/maintain covenants, see RICS Determination at Exhibit 2 to Applicant's Statement of	(1) Facility provided under Sixth Schedule, General Costs Paragraphs 6, 10 and 11. The RICS Determination is void. (2) Covered by the Section 20 Notices of October and	No	Costs allowed. See paragraph 78 of Decision.

			Case. (2) No Section 20 consultation was completed	December 2011.		
58	Stonemasonry	£46,626.03	(1) No Section 20 consultation was carried out (2) The works were carried out to rectify an original design fault, the leaseholder should not have been charged for this work, as determined in The RICS Determination (see Exhibit 2 of the applicant's exhibits to Statement of Case).	(1) The Section 20 Notices of August 2011, and March and April 2012 apply. (2) Rectification of inherent faults is expressly included in the Maintenance Expenses under Sixth Schedule, General Costs Paragraph 16 recoverable through the Lessee's Proportion. (3) The RICS Determination is void.	No	Costs in respect of the Applicant limited to £250 including VAT in any one service charge year. See paragraphs 71 and 75 of Decision.
59	Transfer from sinking fund	£3,929.10	(1) The lease does not allow for a sinking fund. See paragraph 22 of the Applicant's Statement of Case. (2) The sinking fund is used in lieu of a balancing charge, which is not in accordance with good practice or the terms of the lease.	(1) Reserve funds are expressly included in the Maintenance Expenses under Sixth Schedule, General Costs Paragraph 13 recoverable through the Lessee's Proportion. (2) The transfer was part of a consolidation into a general reserve fund, the modest shortfall being carried forward into 2013.	No	Costs allowed see paragraph 76.
60	Water	£3102.93	This lease does not allow for water utilised by individual apartments to be claimed through the service charge. Each apartment has a water meter. The Applicant's water meter is located within the apartment. See Paragraph 26 of the Applicant's Statement of Case.	(1) Facility provided under Sixth Schedule, General Costs, Paragraph 11. (2) See Paragraph 22 of the Respondent's Statement of Case. (3) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed see paragraph 79
61	Path lights	£1227.40	No Section 20 consultation - qualifying long term agreement.	There were three individual renewals, not comprising a	No	Costs Allowed.

				programme of Qualifying Works under Section 20.		
2013 Service Charge Accounts						
62	Cleaning communal areas	£2,918.94	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Covered by the Section 20 Notices of October and December 2012 - not a Qualifying Long Term Agreement (2) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed. See paragraph 74.2 of Decision.
63	Caretaking	£4,516.59	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2012 - not a Qualifying Long Term Agreement.	No	Costs allowed. See paragraph 74.3 of Decision
64	Gardening	£4,864.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2012 - was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.4 and 75
65	Window cleaning	£3,420.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2012 - was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.5 and 75 of Decision.
66	Lift and telephone maintenance	£3,621.61	(1) The Applicant does not have access to the lifts, which serve certain apartments. Access is granted by keys, which are only given to the leaseholders to the particular apartments (2) No Section 20 consultation	(1) Lift maintenance is expressly included in the Maintenance Expenses under Sixth Schedule, Building Costs Paragraph 6 recoverable through the Lessee's Proportion. (2) Covered by the Section 20 Notices of October and December 2012 - not a Qualifying Long Term Agreement.	No	Costs allowed. See paragraph 86 of Decision.

				(3) The Applicant's Portion of the expenditure was less than £250.		
67	Painting	£8,692.53	No Section 20 consultation was completed	Covered by the Section 20 Notices of October and December 2012.	No	Costs in respect of the Applicant limited to £250 including VAT in any one service charge year. See paragraphs 71 and 75 of Decision.
68	Roof repairs	£2,527.20	No Section 20 consultation was completed in relation to these works.	There were four individual repairs, not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed.
69	Fire alarm systems	£2,833.00	(1) No Section 20 consultation was completed (2) Improvements, not covered under the repair/renewal covenants of the lease (3) Work was carried out in individual apartments	(1) Covered by the Section 20 Notices of October and December 2012. (2) Facility provided under Sixth Schedule, Estate Costs, Paragraph 5(b) and General Costs Paragraph 11. (3) Expense covered scheduled service visits, callouts and replacement of failed units.	No	Costs allowed. See paragraph 77 of Decision.
70	Fire safety systems	£1603.80	(1) No Section 20 in 2012 Improvements, not covered under the repair/renewal covenants of the lease (2) Work was carried out in individual apartments (3) Further details required as to full extent of works.	(1) Covered by the Section 20 Notices of October and December 2012. (2) Facility provided under Sixth Schedule, General Costs Paragraphs 10 and 11. (3) Three instances of replaced failed individual units not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed. See paragraph 77 of Decision.
71	General repairs	£2,115.28	Further details required of work carried out are required. No Section 20 consultation was completed in relation to these	There were five individual repairs, not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed.

			works.			
72	Management fees	£7,800.00	Management fee is unreasonable given the level of service provided. The managing agent is not a professional agent.	See Paragraphs 39 to 41 of the Respondent's Statement of Case.	No	Total management fee in any one year to be a maximum of £5400 plus VAT at the appropriate rate. See paragraph 87.
73	Meter box rebuild	£2,299.67	No Section 20 consultation was completed.	Emergency repair to avoid risk of injury from high voltage; expenditure did not meet the Section 20 threshold.	No	Costs allowed.
74	Stonemasonry	£4,304.57	(1) No Section 20 consultation was carried out (2) The works were carried out to rectify an original design fault, the leaseholder should not have been charged for this work, as determined in The RICS Determination (see Exhibit 2 of the applicant's exhibits to Statement of Case).	(1) The Section 20 Notices of October and December 2012 apply. (2) Rectification of inherent faults is expressly included in the Maintenance Expenses under Sixth Schedule, General Costs Paragraph 16 recoverable through the Lessee's Proportion. (3) The RICS Determination is void.	No	Costs in respect of the Applicant limited to £250 including VAT in any one service charge year. See paragraphs 71 and 75 of Decision.
75	Fire escape	£5,180.00	Improvement item excluded by in The RICS Determination (see Exhibit 2 of the Applicant's Statement of Case). Item does not appear as itemised in 2013 Annual Accounts. Please confirm that the leaseholders were not charged for this amount by means of a sinking fund/reserve fund transfer or by any other means.	The certified accounts show expenditure of £18.60 under this heading.	No	Costs allowed however limited to £250 including VAT in respect of the Applicant. See paragraphs 75 and 78 of the Decision.
76	Water	£3,340.91	This lease does not allow for water utilised by individual apartments to be claimed through the service charge. Each apartment has a water meter. The Applicant's water meter is located within the apartment. See Paragraph 26 of the Applicant's	(1) Facility provided under Sixth Schedule, General Costs, Paragraph 11. (2) See Paragraph 22 of the Respondent's Statement of Case. (3) The Applicant's Portion of the	No	Costs allowed see paragraph 79

			Statement of Case.	expenditure was less than £250.		
77	Water dispute	£2,224.90	Further details required.	Provision for a charge arising from the liquidation of the Respondent's payment agent as reported to the November 2014 AGM and disclosed in the minutes of that meeting. Issue now settled at £271 less than the provision.	No	Costs allowed see paragraph 79
78	Path lights	£1836.84	No Section 20 carried in 2012 to cover the scope of work	There were two unrelated repairs and purchases of light bulbs, not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed.
2014 Service Charge Accounts						
79	Cleaning communal areas	£2,908.92	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	(1) Covered by the Section 20 Notices of October and December 2013 - not a Qualifying Long Term Agreement (2) The Applicant's Portion of the expenditure was less than £250.	No	Costs allowed. See paragraph 74.2 of Decision.
80	Caretaking	£4,606.46	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2013 - not a Qualifying Long Term Agreement.	No	Costs allowed. See paragraph 74.3 of Decision.
81	Gardening	£4,560.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2013 - was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.4 and 75
82	Window cleaning	£3,420.00	No Section 20 consultation was completed - Respondent to confirm whether contracts are Qualifying Long Term Agreements	Covered by the Section 20 Notices of October and December 2013 - was a Qualifying Long Term Agreement.	No	Costs in respect of the Applicant limited to £100 including VAT in any one service charge year. See paragraphs 74.5 and 75 of

						Decision.
83	Painting – external redecoration	£8,039.62	No Section 20 consultation was completed	Covered by the Section 20 Notices of October and December 2013.	No	Costs in respect of the Applicant limited to £250 including VAT in any one service charge year. See paragraphs 71 and 75 of Decision.
84	Legal fees re dispute with Mr and Mrs Pratt	£11,100.00	To be excluded upon the granting of applicant's Section 20C application.	Costs related to a prospective County Court action, not this application to the Tribunal.	No	Not allowed.
85	Fire alarm systems	£2,833.00	(4) No Section 20 consultation was completed (5) Improvements, not covered under the repair/renewal covenants of the lease (6) Work was carried out in individual apartments	(1) The certified accounts show expenditure of £1895.86 under this heading. (2) Covered by the Section 20 Notices of October and December 2013. (3) Facility provided under Sixth Schedule, Estate Costs, Paragraph 5(b) and General Costs Paragraph 11. (4) Expense covered scheduled service visits, callouts and replacement of failed units.	No	Costs allowed. See paragraph 77 of Decision.
86	Management fees	£7,800.00	Management fee is unreasonable given the level of service provided. The managing agent is not a professional agent.	See Paragraphs 39 to 41 of the Respondent's Statement of Case.	No	Total management fee in any one year to be a maximum of £5400 plus VAT at the appropriate rate. See paragraph 87.
87	Fire escape	£5,978.40	(1) These works were an improvement and were not included in the Respondent's repair/maintain covenants, see RICS Determination at Exhibit 2 to Applicant's Statement of Case. (2) No Section 20 consultation was completed	(1) Facility provided under Sixth Schedule, General Costs Paragraphs 6, 10 and 11. The RICS Determination is void. (2) Covered by the Section 20 Notices of October and December 2013.	No	Costs allowed however limited to £250 including VAT in respect of the Applicant. See paragraphs 75 and 78 of the Decision.
88	Water	£3266.08	This lease does not allow for water	(1) Facility provided under Sixth	No	Costs allowed see

			utilised by individual apartments to be claimed through the service charge. Each apartment has a water meter. The Applicant's water meter is located within the apartment. See Paragraph 26 of the Applicant's Statement of Case.	Schedule, General Costs, Paragraph 11. (2) See Paragraph 22 of the Respondent's Statement of Case. (3) The Applicant's Portion of the expenditure was less than £250.		paragraph 79.
89	Fire safety systems	£596.04	No section 20 was carried out in 2012 for the full scope of works	One instance of a replaced failed individual unit not comprising a programme of Qualifying Works under Section 20.	No	Costs allowed. See paragraph 77 of Decision.
90	Boiler ventilation upgrade and reinstatement	£1560.00	Respondent to confirm that this is the communal boiler.	Confirmed as upgrade of the communal basement facility to comply with revised gas safety regulations.	Confirmed	Accepted by Applicants.