12702

FIRST - TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HB/LLC/2017/0004.
Property	:	Grantham Apartments, 327-329 Two Mile Hill Road, Bristol, BS15 1FE.
Applicant	:	The Leaseholders of Grantham Apartments as listed in Appendix 1 to the decision.
Representative	:	Ms Christine Crowe, leaseholder flat 3.
Respondent	:	Floorweald Limited.
Representative	:	Mr. Tony Fischer, a director.
Type of Application	:	Liability to pay service charges, Section 27A Landlord and Tenant Act 1985.
Tribunal Members	:	Judge J G Orme (Chairman) Mr. M J Ayres FRICS (Member)
Date and Venue of Hearing	:	23 March 2018. Bristol Civil & Family Justice Centre.
Date of Decision	:	5 April 2018.

Decision

For the reasons set out below, the Tribunal determines that:

1. **The estimated service charge payable by the Applicants listed in Appendix 1 to this decision to the Respondent, Floorweald Limited on account of the service charge for Grantham Apartments, 327-329 Two Mile Hill Road, Bristol for the period from 25 March 2017 to 24 March 2018 is £46,699.00 calculated as set out in the table below. The total service charge is to be divided between the Applicants in accordance with the terms of their respective leases.**

	Amount claimed	Amount allowed
Schedule 1 External and building		
Exterior repairs and painting	40,000.00	23,000.00
Accountancy and Audit	600.00	600.00
Buildings Insurance	4,100.00	0.00
Contingency	2,000.00	0.00
Management Fee	3,969.00	3,969.00
Repairs and Maintenance	3,800.00	3,800.00
H&S Report	450.00	450.00
Schedule 2 Flat only costs		
Electricity	1,000.00	1,000.00
Internal re-painting	10,000.00	7,000.00
Intercom rental	1,500.00	1,500.00
Intercom phone line	780.00	780.00
Cleaning	950.00	950.00
Repairs and Maintenance	3,650.00	3,650.00
Contingency	1,000.00	0.00
Total	**73,799.00**	**46,699.00**

2. **The Tribunal makes no order pursuant to section 20C of the Landlord and Tenant Act 1985 (as amended).**

3. **The Tribunal makes no order pursuant to paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002.**

4. **The Tribunal makes no order for costs or for reimbursement of fees pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**

Appendix 1 to the Decision
The Leaseholders/Applicants

Caroline Burrows	Flat 1
Adrian & Susan Woodward	Flats 2 & 8
Christine Crowe	Flat 3
Janice & Dale Yeats	Flat 4
Hannah Wakefield	Flat 5
Fiona Baker	Flat 6
Connie Singer	Flat 7
Reverend David & Anne Davies	Flat 9
Rebekah Johnson	Flat 10
Callam Hele	Flat 11
Owen Davies	Flat 12
Paul & Maria Upfold	Flat 13

Reasons

Background

1. 327-329 Two Mile Hill Road, Bristol, BS15 1FE ("the Property") is a block of mixed use property at Kingswood, Bristol. There are 2 shop units fronting Two Mile Hill Road and 13 flats behind and above the shops arranged over 3 levels. Since May 2015, the freehold of the Property has been vested in the Respondent, Floorweald Limited ("the Company"). The Applicants are the leaseholders of the 13 residential flats which, together, are called Grantham Apartments. The Company is liable to maintain the structure and common parts of the Property and the Applicants are liable to pay a service charge to the Company.

2. In December 2016, the Applicants applied to the Tribunal to determine their liability to pay estimated service charges for the years ended 24 March 2016 and 2017. That application resulted in a decision being issued by a differently constituted tribunal on 26 July 2017 under case reference CHI/00HB/LSC/2007/0002.

3. By an application dated 30 September 2017, the Applicants applied to the Tribunal for a determination of their liability to pay and the reasonableness of service charges on account of services for the years ending 24 March 2018 and 2019. The application included an application for an order to be made under section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act") and for an order to be made under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

4. On 5 December 2017, the Tribunal issued directions. It was recorded in those directions that, as no budget or demand had been issued in respect of the service charge for the year ending 24 March 2019, the application would proceed only in relation to the year ending 24 March 2018. Directions were given for exchange of statements of case and evidence and for the application to be listed for a hearing.

5. The application was listed for hearing on 23 March 2018.

The Law

6. The law relating to determination of the amount of service charges payable by a leaseholder is primarily set out in sections 18, 19, 20, 20B, 21B and 27A of the Act. In brief, if the parties to a lease cannot agree the amount of service charges payable, either the landlord or the tenant may apply to the Tribunal to make a determination. In making that determination, the Tribunal will consider whether the charge is recoverable under the terms of the lease and, if it is, whether the amount claimed has been reasonably incurred and whether the services or works were carried out to a reasonable standard. Where a service charge is payable before the costs are incurred, *"no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise"* – see section 19(2).

7. Section 20 provides that when the landlord wants to carry out qualifying works where the tenant's contribution is going to exceed £250, the landlord must comply with the consultation requirements which are set out in the *Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)* ("the Consultation Regulations"). However, section 20(3) provides that the section applies to qualifying works "*if relevant costs incurred on carrying out the works exceed an appropriate amount.*" If the landlord does not comply with the requirements, it may apply to the Tribunal for dispensation from those requirements under section 20ZA.

8. A tenant may ask the Tribunal to make an order under section 20C of the Act. The Tribunal may make such an order if it considers that it is just and equitable in the circumstances. If an order is made, it prevents the landlord from seeking to recover through the service charge any costs which it has incurred in connection with the application.

9. Similar provisions apply when a landlord is seeking payment of variable administration charges under the terms of a lease. Those provisions are set out in schedule 11 to the 2002 Act. Paragraph 5A of that schedule provides that a tenant may apply to a tribunal to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs.

10. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013/1169 ("the Procedure Rules") gives the Tribunal power to make an order in respect of costs or for reimbursement of fees.

11. The full text of the statutory provisions is set out in Appendix 2 to this decision.

The Lease

12. The Tribunal had before it a copy of a lease dated 12 December 2014 made between Ingenious Properties Limited as landlord and Callam David Jason Hele as tenant ("the Lease").

13. By the Lease, the landlord demised Flat 11 to the tenant for a term of 125 years from 25 July 2014 at a yearly rent of £300 subject to increase.

14. By Clause 7 and the sixth schedule to the Lease, the landlord covenanted to:
    a) insure the Property;
    b) to provide the services;
    c) *"To serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs".*

15. Clause 2 of the Lease defines, amongst others, the following terms:

Service Charge: *a fair and reasonable proportion determined by the Landlord of the Service Costs.*

Service Costs: *the total of:*

a) all of the costs reasonably and properly incurred [or reasonably and properly estimated by the Landlord to be incurred] of:
   i. providing the Services; and
   ii. complying with all laws relating to the Retained Parts;

b) the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the Services; and

c) all rates, taxes ...

Services

a) cleaning, maintaining, decorating, repairing and replacing the Retained Parts and remedying any inherent defect;

b) where reasonably possible to provide heating to the internal areas of the Common Parts during such periods of the year as the Landlord reasonably considers appropriate, and cleaning, maintaining, repairing and replacing the heating machinery and equipment;

c) lighting the Common Parts and cleaning, maintaining, repairing and replacing lighting, machinery and equipment on the Common Parts;

d) cleaning, maintaining, repairing and replacing the furniture, fittings and equipment in the Common Parts;

e) cleaning, maintaining, repairing, operating and replacing security machinery and equipment on the Common Parts;

f) cleaning the outside of the windows of the Building [other than those comprised within the demise of the Commercial Premises];
g) cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the Common Parts;
h) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.

16. In addition to the covenant by the landlord to insure the Property contained in the sixth schedule to the Lease, there is a covenant by the landlord at paragraph 2.2 of that schedule:

To serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building (after any discount or commission but including IPT). Such notice shall state:

a) the date by which the gross premium is payable to the Landlord's insurers; and
b) the Insurance Rent payable by the Tenant, how it has been calculated and the date on which it is payable.

Insurance Rent is defined at length at clause 2 of the Lease but, in essence, it is a fair and reasonable proportion of the cost of any premiums that the landlord expends and any fees and expenses which it incurs in effecting and maintaining insurance of the Property.

17. By Clause 6 and the fourth schedule of the Lease, the tenant covenanted with the landlord, amongst other covenants, to:
    a) pay the rent;
    b) pay to the Landlord the Service Charge demanded by the Landlord under paragraph 4 of Schedule 6 by the date specified in the Landlord's notice;
    c) To pay the Insurance Rent.

The Inspection

18. The Tribunal inspected the common parts of the Property on 23 March 2018 in the presence of Mr. Fischer, a director of the Company, Ms Caroline Burrows, leaseholder of Flat 1, Ms Christine Crowe, leaseholder of Flat 3 and Mr. Baker, father of the leaseholder of Flat 6.

19. The Property appears to be an old building originally used for commercial purposes which has been extended and altered at the rear in recent years. There are 2 shops at ground level fronting onto Two Mile Hill Road. One is currently occupied as a supermarket. The other is currently unoccupied. At the rear of the Property, there is a car park fronting onto Grantham Lane. There are 3 flats at ground floor level with separate doors opening onto the car park. To one side is an entrance to the rear hall from which access can be gained to the rear of the supermarket and to an internal storage area which is used as a bicycle store. A further pair of doors leads from the bicycle store into the front hall which has a door leading onto Two Mile Hill Road. There are

stairs in the front hall which give access to the first and second floors. Flat 8 is at first floor level with access being gained from the landing. A further door leads out onto the flat roof of the supermarket which forms a courtyard from which access is gained to flats 4, 5, 6, 7, 9, 10 and 11. A door from the second floor landing leads onto a balcony which gives access to flats 12 and 13.

20. During the course of the inspection, Ms Burrows pointed out a number of matters which needed attention such as leaning bollards, weeds in the car park, loose light switches, a door which did not close properly, radiators which did not work, damp in the front hall and fire extinguishers which had not been recently serviced. Ms Burrows also asked the Tribunal to note the state of the front doors and the door handles to the flats at first floor level. The Tribunal noted those matters which were pointed out. The Tribunal also noted the state of the outside walls in the courtyard area which appeared to be suffering from growth of algae and a parapet boundary wall to the courtyard area where it was proposed to remove the coping stones and repair damaged render. Internally, the Tribunal noted that the decorations in the communal areas were generally in fair condition with the exception of an area of damp in the front hall and water staining of the ceiling in the bicycle store.

The Hearing

21. The hearings took place at the Bristol Family and Civil Justice Centre on 23 March 2018. Ms Crowe spoke on behalf of the Applicants. She was supported by Fiona Baker (Flat 6) and Connie Singer (Flat 7). The Company was represented by Mr. Fischer. He informed the Tribunal that the managing agent, Mr. Davidoff of Aldermartin, Baines and Cuthbert ("ABC"), had been due to represent the Company but he had been unable to attend at short notice so Mr. Fischer would represent the Company even though he had not been able to fully brief himself about the application.

The Issues

22. At paragraph 6 of the directions, the Tribunal had identified 3 issues:
    a) Whether the on account demand dated 4 April 2017 is payable and reasonable;
    b) Whether the estimated costs of the proposed major works are reasonable in particular in relation to the nature of the works and the estimated contract price;
    c) Whether an order should be made under section 20C or schedule 5A to schedule 11.

23. In their application, the Applicants had also raised an issue as to the validity of a section 20 consultation process which was being undertaken by the Company into the proposed major works. At paragraph 7 of the directions, the Tribunal had flagged up the possibility that that issue may not be relevant to the current application as the costs had not yet been incurred – see section 20(3).

24. In their statement of case, the Applicants had again raised the issue of the validity of the section 20 consultation process. At the start of the hearing, the Tribunal indicated that it did not consider that issue to be relevant to consideration of the reasonableness of the estimated service charge because the costs had not, by the very nature of the application, been incurred and that consideration of the section 20 consultation process would only become relevant once the costs had been incurred. The Tribunal gave the Applicants the opportunity to make submissions as to why it should consider the section 20 process at this stage.

25. During the course of the hearing, Ms Crowe accepted that the estimates for accountancy and audit at £600, health and safety report at £450 and electricity at £1,000 were reasonable. Mr. Fischer accepted that the 2 items for contingencies should be excluded.

The Evidence and submissions

26. The Tribunal proceeded to hear evidence from both parties and to consider the submissions of both parties in relation to each of the remaining headings of expenditure listed in the service charge budget for the period from 25 March 2017 to 24 March 2018 which had been issued to the Applicants by ABC under cover of their letter dated 4 April 2017.

Buildings Insurance

27. The sum of £4,100 was claimed under this heading. The Applicants had suggested £3,655.58. Mr. Fischer was not able to provide any evidence to support the estimate other than to look at the actual premium in the previous year which was £4,062.15. Mr. Fischer accepted that insurance was not included within the definition of Services in the Lease. He said that probably no notice had been served under paragraph 2.2 of schedule 6 to the Lease. He thought that the item should be included in the service charge budget but accepted that it had not been demanded correctly.

28. Ms Crowe said that the premium was much too high as the policy provided cover for loss of rent at an excessive level. The premium had been capped at £3,500 in the previous year by the previous tribunal.

Management Fees

29. The sum of £3,969 was claimed under this heading. The Applicants had suggested £2,500. Mr. Fischer did not know how the fee was calculated. It was slightly higher than the charge for 2016/17. The ruling of the previous tribunal was not binding on this tribunal. The charge did not include management of the Commercial Premises. He accepted that the amount claimed worked out at £305.31 per unit including VAT (£255 plus VAT). He considered that was reasonable. The charge did not include management of the proposed works.

30. Ms Crowe considered the charge to be excessive in the light of the service provided. She complained that the managing agents are based in London and are not in touch with activity and events locally. Based on the charges made by the previous managing agents, she considered that

£150 to £200 per unit including VAT would be reasonable. She relied on the findings of the previous tribunal.

Intercom Rental and Phone Line

31. The sum of £1,500 was claimed for the intercom rental and £780 for the phone line. The Applicants suggested nothing for rental and £272.26 for the phone line. Mr. Fischer had no evidence of the rental cost but referred to paragraph 66 of the previous decision which records the actual rental cost in 2016/17 at £1,467.52. The actual cost of the related telephone line for 2016/17 was £773.40. Mr. Fischer said that the Company had taken over the existing contract from the previous freeholder. The estimates were based on the previous year's costs. He considered that they were reasonable.

32. Ms Crowe said that the Company should review the service provided and the existing contract. She did not know if the contract was terminable. She considered the cost of both rental and phone line to be excessive for 13 flats. She said that no written estimates had been obtained.

Cleaning

33. The sum of £950 was claimed under this heading. The Applicants suggested £457.50. Mr. Fischer said that when the Company had bought the Property, it took over the existing cleaning contract. The Applicants had complained about the standard of service supplied so the Company had put the contract out to tender. It had accepted a mid range price put forward by Express Cleaning. The cost of £950 was based on fortnightly visits and equated to £36.54 per visit. He did not know what the cleaners were required to do on each visit and he did not know if the contract included exterior cleaning or window cleaning.

34. Ms Crowe said that there was no contract in place at the time of takeover and there had been no cleaning service for many months. Express had been appointed but it appeared that that company has sub-contracted to KMC. That would make the cost more expensive. Previously Saint Cleaning had been employed at £15 per hour and they took 1 hour per visit which involved general cleaning of the internal common parts, no window cleaning and no external cleaning. She pointed out that there are no toilets to clean. She considered £457.50 to be reasonable.

Repairs and Maintenance and Major Works

35. This comprises 4 headings in the budget. £3,800 was included for external repairs and maintenance, £3,650 for internal repairs and maintenance, £40,000 for exterior repairs and painting and £10,000 for internal painting. In the bundle of documents, there was a schedule of works ("the Schedule") which had been produced to the Applicants by the managing agents which covered the proposed major works to both the interior and exterior of the Property. The Applicants did not admit any sums in relation to any of these headings. They said that the section 20 consultation process in respect of the major works was defective and that the Schedule duplicated the routine repairs and maintenance. As Mr. Fischer did not have instructions on these headings, it was agreed

that they should be dealt with after the lunch adjournment so that Mr. Fischer could speak to Mr. Davidoff.

36. Mr. Fischer was taken through the Schedule in detail. In so far as he was able to do so, he explained what work was proposed. It was clear that he did not have a detailed knowledge of the works which were proposed. He referred to the boundary wall in the courtyard area. There was loose render. The coping stones would have to be removed and the render repaired. The exterior walls of the flats would need to be cleaned with algae remover. At ground floor level, the eastern wall to the car park area needed considerable work. There were some stone work repairs and re-pointing to be carried out to the front elevation. Internally, it was proposed to re-plaster the wall where damp was penetrating in the front hall and then redecorate the whole of the common parts.

37. Mr. Fischer accepted that some of the works listed in the Schedule such as re-fixing a rain water bracket and clearing weeds could be considered to be routine maintenance.

38. Mr. Fischer considered that the estimates of £40,000 for the external works and £10,000 for the internal works were reasonable. He said that ABC managed over 100 buildings and they had used their experience to propose those figures. On 15 May 2017, Mr. Hawkins, a senior property manager with ABC, had said in reply to a question from Owen Davies (Flat 12) "*When drafting the budget we have made an educated guess based on years of experience doing similar projects in other properties that we manage. The final figures will only be known when we finish the tendering process.*" Mr. Fischer accepted that as a correct statement as to how the estimates had been produced. He then pointed to the quotations which had been received for the internal works which were referred to in the section 20 notices which were in the bundle. 2 quotations had been received for £16,398 and £18,038. Mr. Fischer was unable to produce the specifications on which those quotations were based so he could not clarify for the Tribunal precisely what work was included in the quotations. He said that quotations had been obtained for the external work but he was unable to produce them and did not know how much they were for.

39. Mr. Fischer said that the internal common parts had last been decorated in 2011. He accepted that some areas were not as bad as others but considered that it would be cheaper in the long run to have the whole decorated at the same time.

40. Mr. Fischer said that the estimates for other items of routine repair and maintenance were to provide for other work which might be needed during the year and which were not included in the Schedule. It was a contingency for unforeseen work. He thought that the estimate of £50,000 for the proposed works was conservative and the overall total estimate of £57,450 for repairs and maintenance was reasonable. He accepted that he was not an expert on pricing.

41. Mr. Fischer confirmed that none of the works listed in the Schedule had actually been carried out. He pointed out that if the leaseholders had paid their service charge on time, the landlord would be in funds to carry out the work. He had offered to meet the leaseholders to discuss the proposed work but that had been declined.

42. Ms Crowe commented on the items in the Schedule. She considered that many of the items fell within routine repair and maintenance. She said that the damp had been reported in 2016 and had not been investigated properly. It was not aided by the heaters in the hall not working properly. She thought that some items such as repairs to the render would be covered by the guarantee given when the work was carried out. She did not consider that the whole of the internal common parts needed decorating. She thought that the first and second floors were in good condition. She questioned whether the east wall in the car park was owned by the Company. She considered that the damage to the front of the Property had been caused by the tenant of the shops. She said that a lot of the items had been requiring attention for a long time and the failure to keep the Property in repair in the past meant that there is a greater need for repairs now.

43. Ms Crowe accepted that the majority of work listed in the Schedule needed to be done. She did not consider that it was necessary to varnish the wooden doors, decorate the upper floors, replace the external door handles or investigate the manhole. She had no evidence as to what it would cost to carry out the work. The contractor nominated by the Applicants had not quoted for the work because the tender documents produced by ABC were too complicated. She accepted that there should be a sum allocated to repairs and maintenance. She thought that the figures of £3,800 and £3,650 were reasonable but should include all the works in the Schedule.

44. Ms Crowe's main complaint was that there had been a lack of transparency by ABC in relation to the proposed work. The Applicants had asked for but had not been given enough information about what was proposed and how the cost was calculated. It was unfair to expect the Applicants to pay so much without proper quotations for the work. Many of the Applicants had been forced to pay the demands. No demands had been issued for the second installment of the service charge. The invitation to meet had not been accepted as it was at short notice.

Section 20C

45. Mr. Fischer accepted that there is no provision in the Lease which allows the Company to add its costs in connection with this application to the service charge.

Costs

46. Ms Crowe applied for reimbursement of the fees paid to the Tribunal in the sum of £300 and for costs of £87 to cover costs of preparing the bundles, postage and parking. She said that the Company had acted

unreasonably in failing to respond to requests by the Applicants for information.

47. Mr. Fischer said that the Applicants had brought the situation on themselves by failing to pay service charges. The Company had offered to mediate but that had been refused. The Company did not apply for an order for costs.

Conclusions

48. The issue which the Tribunal must determine is whether the service charge budget for the year from 25 March 2017 to 24 March 2018 is reasonable. If it is not, the Tribunal must determine what amount is payable. It has to be borne in mind that the budget is just that. It is an estimate of the likely costs which will be incurred during the service charge year. The Tribunal must be satisfied that the proposed expenditure is expenditure which is recoverable as a service charge under the terms of the Lease and it has to be satisfied that the proposed sums are reasonable.

49. The Lease is drafted in such a way that, although the landlord is obliged to maintain the Property and provide certain services, it can look to the leaseholders to provide funds in advance to cover the cost of that work. The landlord is not obliged to fund the work and services and then seek recovery from the leaseholders.

50. It goes without saying that when considering a budget, no services will have been provided and no work will have been carried out. Therefore, the Tribunal is not in a position to consider whether services have been provided to a reasonable standard or whether work has been carried out to a reasonable standard. The Tribunal must assume that the landlord proposes to carry out the work or provide the services to a reasonable standard. The Tribunal must also assume that the landlord will comply with any requirements of the Lease or statute when performing its obligations. Therefore, the question of whether or not the landlord has complied with the consultation requirements set out in section 20 of the Act is not an issue which can be considered by the Tribunal when determining the budget.

51. Once the service charge year has been completed, the landlord must provide an account of its actual expenditure during the year. If the actual expenditure exceeds the budget, the leaseholders will have to pay the excess and if the actual expenditure is less than the budget, the landlord will have to repay the balance to the leaseholders. If, at that stage, the leaseholders consider that the landlord's expenditure has not been reasonably incurred or that services have not been provided to a proper standard, the leaseholders may challenge the expenditure and, if appropriate, ask the Tribunal to make a determination on the issue of actual expenditure. That is the appropriate time to raise issues about compliance with section 20 of the Act.

52. A further factor which must be borne in mind is that the Lease makes no provision for the landlord to build up a reserve fund to cover the cost of cyclical works which do not occur every year, such as decoration or major works of repair. When such work is necessary, although the landlord is obliged to carry out the work, it may make an estimate of the cost of such work and ask the leaseholders for a payment on account of such costs in advance of the work being carried out.

53. It was apparent to the Tribunal from its inspection of the Property and from hearing the submissions of both parties that management of the Property in previous years may not have been perfect. Certain works have not been carried out at the appropriate time and certain services may not have been provided to a reasonable standard. However, the Tribunal must look at what the landlord is now proposing to do and consider whether the estimated cost is reasonable.

Buildings Insurance

54. Although insurance is a matter which comes within the definition of service charge in section 18 of the Act, the Tribunal is satisfied that buildings insurance is not a cost which should be included within the service charge as defined in the Lease. Insurance is not included within the definition of Services in the Lease. Therefore the cost of insurance does not fall within the definition of Service Costs and cannot form part of the Service Charge as defined in the Lease.

55. The Company is perfectly entitled to recover from the Applicants a contribution towards the cost of insurance in advance of incurring the expenditure but there is a clearly laid out process which the Company must follow. That is found in paragraph 2.2 of schedule 6 of the Lease.

56. Therefore, the Tribunal allows nothing for insurance within the budget.

Management Fees

57. No clear evidence was provided by either party as to what might be a reasonable fee to be charged by a managing agent for managing the flats at the Property. Ms Crowe relied on the fees charged by the managing agents who were appointed by the previous freeholder. The Tribunal does not find that to be a useful guide as there is no evidence that they were fulfilling their role to a proper standard or that they would be prepared to continue to act at that level of fee.

58. Relying on its own knowledge and experience, the Tribunal considers that the fee proposed by the Company's agents, namely £255 plus VAT per flat is a reasonable fee and the Tribunal will allow the sum of £3,969 for this item. Whether or not that fee can be justified retrospectively will depend on the quality of service provided by the agents.

Intercom Rental and Phone Line

59. The best evidence before the Tribunal as to the actual cost of rental of the intercom system is to be found at paragraph 66 of the previous tribunal decision. There was no evidence before the Tribunal to show that the

rental agreement could be terminated or that a suitable intercom system could be provided at a lesser cost. In the circumstances, the Tribunal is satisfied that £1,500 is a reasonable estimate of the cost of rental of the system.

60. The Company says that it is necessary to have a phone line for the system to operate. The actual cost of that line in 2016/17 was £773.40. The Tribunal considers that £780 is a reasonable estimate of the likely cost in 2017/18.

Cleaning

61. The evidence in relation to cleaning was unsatisfactory on both sides. The Company could have provided more details as to the existing contract such as the work required by the contractor and the charge by the contractor. The Applicants could have provided some alternative quotes for cleaning.

62. The Tribunal notes that the Company pays for cleaning on a fortnightly basis. The estimate is for £950. That equates to £36.54 per visit. Although there is not a lot of cleaning to be done internally at the Property, the Tribunal considers that that sum is not excessive. It will allow £950.

Repairs and Maintenance

63. Mr. Fischer relied on the quotations of £16,398 and £18,038 which are mentioned in the section 20 notice dated 30 November 2017. The notice refers to "*repair and redecorate the interior common parts of the building and all ancillary works*". There is no evidence before the Tribunal as to precisely what work the quotations relate to, whether it is all or only part of the work mentioned in the Schedule or, indeed, whether it relates to the Schedule at all. The Tribunal places no reliance on those estimates.

64. Overall, the decorative state of the interior of the common parts was fair with a clear need for re-decoration in places. If the interior was last redecorated in 2011, the Tribunal considers that it would be reasonable to propose a redecoration throughout in 2017/18. If part is to be redecorated, then it makes sense to do the whole at the same time. It is likely that it would cost more to do the redecoration in parts.

65. The Tribunal is concerned by the Company's proposal to strip off the plaster and then re-plaster the front hall when there appears to have been no investigation as to the cause of the dampness which is evident. The dampness could be caused by condensation which might be caused by the lack of heating in the hall due to defective heaters.

66. The Tribunal was not satisfied that it was necessary to varnish the interior doors which are already varnished and which appear in good condition.

67. The Tribunal considers that it is reasonable for the Company to plan for the expense of removing the coping stones and repairing the render on the boundary wall at first floor level. A repair is clearly required and the Company will not know whether it is able to claim under the guarantee until the cause of the defect is known.

68. Likewise, the Tribunal considers that it is reasonable for the Company to repair the East wall to the car park provided that it owns and is responsible for maintenance of that wall. That is an issue which the Company should investigate but until the contrary is proved, it is reasonable to include the cost in the estimate.

69. The Tribunal is satisfied that the proposed works to the front of the Property are necessary. The Tribunal notes that scaffolding will be required for that work and that it will be over the pavement which adds to the cost. The Company will need to consider whether it can recover part of the cost from the tenant of the shop.

70. The Tribunal is not concerned by the fact that some of the works proposed in the Schedule are items which would normally be considered as items of routine maintenance rather than major capital items. What the Company has proposed is to carry out a package of works to bring the Property up to a proper state of repair. The Tribunal is satisfied that it is reasonable for the Company to include in that work repairs to the external doors and door handles which appeared worn and loose.

71. Taking into account all those comments, the Tribunal finds it very difficult to believe that the works listed in the Schedule will cost £50,000. There is no evidence to support that figure except the opinion of Mr. Hawkins. The Company has not obtained a surveyor's report as to whether the plaster repairs are required. It has not obtained a properly costed schedule of works. The Tribunal is not satisfied that £50,000 is a reasonable estimate for the cost of the works listed in the Schedule. Using its own experience and knowledge, the Tribunal considers that a reasonable estimate for the cost of the works is £30,000 and divides that as to £23,000 for the external work and £7,000 for the internal work. Those are the sums which will be allowed.

72. The Tribunal considers that it is reasonable to have additional, separate items for ongoing repairs and maintenance. The works proposed in the Schedule represent a snap shot of works required at a particular time. It is quite likely that other works will be required during the course of the year which are not included in the Schedule. Work to straighten the bollards is an example. It is very difficult for the Company to predict in advance what work will be required. The Lease does not provide for a reserve fund and so the Company holds no cushion to pay for unexpected and necessary work. The Tribunal considers that the amounts included in the budget are reasonable and will allow those sums. If, at the end of the year, the Company has not spent that amount, it will have to repay the contributions to the Applicants.

73. The Tribunal is conscious that all its comments in relation to repairs and maintenance may well be academic as the service charge year has now concluded and it was apparent from the inspection that none of the planned works have been carried out. No doubt, the process will have to be repeated in 2018/19.

Section 20C and Costs

74. Mr. Fischer accepted that there is no provision in the Lease which allows the Company to recover any of its costs incurred in relation to this application through the service charge. In the circumstances there is no need for the Tribunal to consider making an order under section 20C of the Act and it declines to do so.

75. The application includes an application for an order to be made under paragraph 5A of schedule 11 to the 2002 Act. Schedule 11 relates to the reasonableness of administration charges. Paragraph 5A allows the Tribunal to make an order reducing or extinguishing a tenant's liability to pay an administration charge in relation to litigation costs. Ms Crowe did not point to any provision in the Lease which entitles the Company to recover litigation costs as an administration charge. The Tribunal can find no such provision. In the circumstances, the Tribunal declines to make such an order.

76. The Tribunal is not satisfied that the Company has acted unreasonably in defending or conducting these proceedings and the Tribunal makes no order for costs against the Company. The Applicants may consider that the Company has acted unreasonably in relation to its management of the Property and by a lack of information but that is separate from its behavior in relation to its conduct of the proceedings.

77. The Tribunal declines to make an order for reimbursement of fees under Rule 13(2) of the Procedure Rules. Although the Applicants have been successful to a degree in this application, the result does not take their position forward in substantive terms. They chose to make this application to challenge an estimated service charge when their efforts may have been better focused on looking at the actual expenditure at the end of the year. The result appears to have been to delay the carrying out of works which are required.

Right of Appeal

78. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.

79. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28 day time limit, the

person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.

80. The parties are directed to Regulation 52 of the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169*. Any application to the Upper Tribunal must be made in accordance with the *Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme
Judge of the First-tier Tribunal
Dated 5 April 2018

Appendix 2.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19

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

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
   a. if it is an agreement of a description prescribed by the regulations, or
   b. in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord –
   a. to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
   b. to obtain estimates for proposed works or agreements,
   c. to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
   d. to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
   e. to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section –
   a. may make provision generally or only in relation to specific cases, and
   b. may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under

the terms of his lease to contribute to them by payment of a service charge.

Section 20C

(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 court, residential property tribunal leasehold valuation tribunal or the First-tier Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provision of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for 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 would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application 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 to have agreed or admitted any matter by reason only of having made any payment.

(6) ...
(7) ...

Commonhold and Leasehold Reform Act 2002
Schedule 11 – paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
(3) In this paragraph;
   a) "litigation costs" means costs incurred, or to be incurred by the landlord in connection with proceedings of a kind mentioned in the table, and
   b) "the relevant court of tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
Rule 13

(1) The Tribunal may make an order in respect of costs only:
   a) Under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
   b) If a person has acted unreasonably in bringing, defending or conducting proceedings in:
      i. An agricultural land and drainage case;
      ii. A residential property case; or
      iii. A leasehold case; or
   c) In a land registration case.
(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
(3) The Tribunal may make an order under this rule on an application or on its own initiative.
(4) ...
(5) ...
(6) ...
(7) ...
(8) ...
(9) ...