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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2019/0480** **LON/00BK/LSC/2020/0037**
HMCTS Code	**:**	**CVP Remote**
Property	**:**	**Flat 10/11, 52-53 Leinster Square, London W2 4 PU**
Tenant	**:**	**Jeffrey Robert Mangano**
Representative	**:**	**Mr Mark Loveday, Counsel instructed by Jury O'Shea LLP Solicitors**
Landlord	**:**	**Holland Co-ownership Limited**
Representative	**:**	**Mr James Fieldsend, Counsel instructed by Jeremy Davies & Co Solicitors**
Type of Application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mrs Evelyn Flint DMS FRICS** **Mr John E Francis**
Date and venue of Hearing	**:**	**Remote video hearing over the period 26th October 2020 to 30th October 2020**
Date of Decision	**:**	**30th November 2020**

DECISION

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVP Video. A face-to-face hearing was not held because it was not practicable and no one requested same and further that issues could be determined in a remote hearing.

The documents that we will refer to are in four bundles and additional papers, which have been noted by us during the course of the hearing. The order is as described at the end of these reasons.

BACKGROUND

1. There are two applications under section 27A of the Landlord and Tenant Act 1985 (the Act). The application that came first in time is by the Landlord seeking a determination in respect of major works to the interior and exterior of the property at 52-53 Leinster Square, London W2 4PU (the Property). These refurbishment works were carried out in 2015 and 2016. In addition to these works there are also claims made in respect of boiler replacement works carried out in 2016. The liability to pay for these works is disputed by Mr Mangano. This is case ending 2019/0480.

2. The second application ending 2020/0037 is brought by Mr Mangano and concerns the same items of major works and also a challenge to general service charges for the years 2015 to 2019/20, this latter year being an on account payment. Initially there were a number of items in dispute but thankfully these were reduced and were set out on a document headed Agreed List of Issues, which was produced by Counsel during the course of the hearing and to which we will return in due course.

3. The landlord is a housing co-operative and the freehold owner of the Property. It was registered as the freeholder in 1968 and is a registered society within the meaning of the Co-operative and Community Benefits Societies Act 2014.

4. The Property contains 11 flats, each of which is let on a long lease and each of the flat owners are members of the Landlord. It is, we think, accepted between the parties that the landlord has no resources apart from the service charge and is essentially a resident-owned management company.

5. The Tenant is a lessee of the conjoined flats at 10 and 11, which had been combined to create a single unit prior to Mr Mangano's purchase. The lease of 10/11 is dated 28th September 2010 and it is understood that Mr Mangano acquired his interest in July of 2013.

6. It is fair to say that there has been something of a history between the Tenant and the Landlord. In 2015/16 the Tenant brought three applications against

the Landlord, one under the Act, another for the appointment of a manager under the Landlord and Tenant Act 1987 and the third a claim under the Co-operative and Benefits Societies Act 2014. The decision in that case was dated 10th May 2017 (the 2017 Decision) and there was a further hearing, which resulted in a decision dated 26th October 2017. The 2017 Decision is of importance in this case as it is used by the Landlord as a potential bar against the Tenant seeking to challenge issues which it is said were raised and dealt with or could have been raised in these previous proceedings.

7. The lease under which the Tenant occupies his property is dated 28th September 2010 for a term of 999 years at a peppercorn rent. The lease provides for an interim service charge and a final service charge after certification, which in itself is a source of conflict in this case. The Tenant's apportionment of costs is 13.898%, although appears to be rounded up to 13.9% in the documentation produced for the purpose of this hearing. The service charge year ends on 5th April in each year.

8. Insofar as the major works are concerned, these represent, as we have indicated above, refurbishment to the interior and exterior of the building for which it is said the Landlord has spent £139,086.83. In respect of the boiler replacement works, it is said that £19,800 has been spent and it was conceded by the Tenant that there was no challenge to the quantum in respect of this boiler replacement works. It is we think accepted that in respect of the refurbishment works these were carried out in the service charge years 2014 to 2016 and that the boiler works were carried out in the service year 2015/16.

9. Insofar as the refurbishment works are concerned, the Landlord says that the costs of this matter were either decided by the Tribunal in the 2017 Decision or should have been the subject of challenge by the Tenant at that time and that as a result it is not open to the tenant to challenge these in the proceedings before us.

10. It is important, therefore, that we consider the terms of the 2017 Decision and determine whether in our view there was findings made which might preclude the Tenant from challenging the costs of refurbishment works in these proceedings.

THE 2017 DECISION

11. The Tribunal in that case was required to deal with three matters. The first was an application under section 27A of the Act requiring a determination to pay certain service charges. The second was an application by the Tenant for the appointment of a manager and the third was a County Court claim disputing matters under the 2014 Act. The Tenant, Mr Mangano was partially successful in respect of the first matter but was not successful in respect of the appointment of manager or the County Court issue.

12. This decision followed a hearing over six days in November and December 2016 leading to a decision on 10th May 2017. At paragraph 5 of the decision the Tribunal sets out the history of the case and the witnesses that came before

them. It does not seem necessary for us to set out a chronology of the events at the Property as that is covered fully in the 2017 Decision.

13. Paragraph 22 of the decision is worth noting because it records that in November of 2016 shortly before the matter was due to be heard, the Tribunal requested particularisation of breaches of the terms of the lease and the relevant RICS Code aimed at assisting them in connection with the appointment of manager case. It seems, however, that at the final hearing Mr Mangano sought to amend his case by reliance on breaches of other terms of the lease and provisions of the code which were not referred to in the witness statement. This was objected to and that objection was supported by the Tribunal. They said as follows:

"Ample opportunity has been given to Mr Mangano to marshal and particularise his case before the final hearing. There is no justification for a late amendment and in any event it would be wholly disproportionate and unfair to allow additional matters to be raised at such a late stage."

14. In respect of the service charge claim, the decision records that Mr Mangano sought to challenge all service charge costs for the years ending 2013, 14 and 2015. In July of 2016, after we think there was a change of Counsel, permission was given to Mr Mangano to challenge the contractual basis of the service charges and the conduct of the service charge mechanism within the lease. It is said in the decision that by the hearing the service charge challenge had been narrowed and related to the following issues:-

    a. Monthly interim charges which were found to be payable by Mr Mangano.
    b. Ad hoc charges which were found not to be payable by Mr Mangano.
    c. Relevant costs where decisions were made by the Tribunal in this decision.

15. In this case it is the ad hoc charges which have caused the concerns. It is worth noting that at paragraph 45 of the decision that the Tribunal said this:

"On that basis we find that as a matter of contract the "ad hoc" charges for major works are not recoverable as interim charges. However, they do become payable upon certification under paragraph 6 of the schedule." That is to say paragraph 6 of the schedule to the lease, which we will return.

16. On the question of certification, the Tribunal made the following finding at paragraph 51.

"As to certification we also find that HoCo (the Landlord) failed to comply with a requirement in paragraph 6 of the schedule to "prepare and serve" upon each member service charge accounts. However, we do not consider there is an obligation under the lease to have service charge accounts audited. We note the entitlement in clause 7 for a member to be provided with copies of the audited accounts but we do not consider that this amounts to an express or implied obligation to have the accounts routinely audited each year. This is not what the lease says."

17. We bear in mind the findings made by the Tribunal in this 2017 Decision and will return to those in due course when we make our findings in respect of the various issues in dispute.

LEASE TERMS

18. It seems appropriate at this time to consider the terms of the Tenant's lease and in particular the sixth schedule. This is headed "The Service Charge" and defines the accounting period, what is meant by total expenditure, the service charge and interim charge.

19. At paragraph 5 the lease says as follows: *"If the service charge in respect of any accounting period exceeds the interim charge paid by the member in respect of that accounting period, together with any surplus from previous years carried forward as aforesaid, then the member shall pay the excess to the association within 28 days of service upon the member of the certificate referred to in the following paragraph and in case of default the same shall be recoverable from the member by the association by rent in arrears."*

20. At paragraph six of the sixth schedule, it says as follows: *"As soon as practicable after the exploration of each accounting period the association or the managing agents shall prepare and serve upon each member service charge accounts in respect of the accounting period showing where applicable any excess of deficiency of the service charge over the interim charge and upon request prepare and serve a certificate containing information relating to the amount of the total expenditure for the accounting period and the amount of the interim charge paid by the member in respect of that accounting period together with any surplus carried forward from the previous accounting period."*

21. Paragraph 7 of the schedule allows the member at his or her own expense and upon prior payment of costs to have the accounts audited at the Tenant's expense.

DOCUMENTATION

22. In preparation for the hearing we were provided with a number of bundles of documents running to several hundred pages. These included witness statements by Mr Mangano, Mr Davies both the instructed solicitor for the Landlord and the director of Chelsea Residential Management Limited (CRM) and Brian Strickler who was a member of the Landlord Company and a lessee at the Property. We have noted the contents of those witness statements and borne them in mind in making our determinations.

23. In addition to those documents we were provided with a copy of Mr Mangano's lease, a schedule of disputed service charge items, which as a result of close co-operation between Counsels was substantially reduced. In addition, we had before us the Tenant's statement of case, a reply made by the Landlord and the

Tenant's reply to that document, which was brief. Again, we have borne the contents of these documents in mind when reaching our decisions.

24. Both Counsel had very helpfully provided us with skeleton arguments which we had the opportunity of considering prior to the hearing. At the commencement Mr Loveday on behalf of Mr Mangano confirmed with us that his client's position was that if we found in his favour in respect of the challenge to management fees and the costs of the external and internal refurbishment works it would be appropriate to reduce those costs by 25%. Mr Loveday also confirmed that Mr Strickler would not be the subject of cross-examination and that accordingly the Landlord relied on his written witness statement, which we had the opportunity of reading in advance of the hearing. In addition to these concessions by Mr Loveday, we record also his agreement that the certificates provided by the Landlord in 2019 meet the requirements of the sixth schedule of the lease.

25. In addition, challenges that had been made in respect of the provisions of section 47 of the Landlord and Tenant 1987 and section 20 of the Act have fallen away. In addition, Mr Mangano no longer makes any challenge the service charge costs for 2014/15, save as to the reasonableness of the major works and did not challenge the estimated costs.

THE ISSUES

26. It is perhaps helpful at this point to refer to the agreed list of issues which Counsel prepared for us and which was of great assistance. The issues are as follows:

Issue 1 - major works
The extent to which the Tenant is permitted to challenge the payability and or the amount of the works by way of service charge both for the refurbishment works and the boiler replacement works. The question we are asked to consider is whether the Tenant is or should be precluded from challenging on the grounds of (i) res judicata or otherwise an abuse (ii) there being an agreement for the purposes of section 27A(4) of the Act and (iii) or an estoppel based on a letter from Dewer Hogan of 17th October 2014.

Issue 2 in respect of the major works is whether or not the limitations imposed under section 20B of the Act are applicable in this case.

Section 20B headed "Limitation of Service Charges: Time Limit on Making Demands" says as follows:

(i) *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 charges served on the Tenant, then (subject to sub-section (2) the Tenant shall not be liable to pay so much of the service charge as reflects the cost so incurred.*

(ii) *(Sub-section 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 the lease to contribute to them by the payment of a service charge.

On the question of section 20B we noted that which was said by Mr Fieldsend in his closing submissions on behalf of the Landlord at paragraph 31. The focus before us is on the substance of section 20B(2) and the interpretation thereof together with the numerous cases which were cited by both Counsel.

Issue 3 is the reasonableness of the refurbishment works. The position of the Landlord was that essentially the Tenant could not challenge these as they had been considered under the 2017 Decision. If, however, we were against the Landlord on that, the question was what sum should be allowed.

27. Issues 4- 8 relate to the service charges under section 19 which had been set out on the Scott Schedule but greatly reduced. These were now limited to the costs of garden maintenance, insurance, cleaning, management and a challenge in respect of the reserve fund and the contributions thereto.

28. In addition to these matters, the question as to whether or not an order should be made under section 20C was raised but it was the intention of both parties to address that issue after we had decided on the substantive matters.

HEARING

29. At the hearing the oral evidence we received on behalf of the Landlord was limited to that given by Mr Jeremy Hugh Davies who is both the solicitor acting on behalf of the Landlord and a director of CRM, who are the managing agents for the Property.

30. He made a witness statement both as a director and on behalf of the Landlord. We noted all that was said. The relationship between Mr Davies and Mr Mangano is evidenced in this witness statement, for example an allegation made that Mr Mangano erroneously stated he paid some monies on completion when it was said that in fact these may have been paid by the existing vendor. The statement says "no doubt JM did not return such monies." Quite how that assists us in connection with considering the issues before us is unclear, but it does set the scene in respect of the relationship between Mr Davies and Mr Mangano.

31. A history as to the production of accounts is given, albeit briefly. It is said by Mr Davies that the accounts follow an annual general meeting held in October of each year and that although the accounts may have been in some way deficient when they were reviewed, the contents did not alter. The witness statement then goes on to recite Mr Davies' view of the 2017 Decision and referred us to a paragraph thereof, which we have already referred to above (paragraph 45).

32. Moving on to the relevant costs, we heard from Mr Davies about the garden maintenance, which appears to relate solely to access to the Leinster Square Garden which is run by the Leinster Square Garden Association. It seems that this body makes a charge on each of the buildings, although in this case it was said that there is something of a discount, although the payment appears to be

in respect of 10 flats it is not disputed that Mr Managno does not have the right to use the gardens. We were told that the members of the Landlord had unanimously agreed to pay the subscription as a service charges, although it would appear that the word unanimous did not include Mr Mangano. It is said that the costs of the membership of the Association have been recoverable as a service charge pursuant to clause 13 of the 5th schedule. It is we think accepted that the building has never had a garden and it is suggested that the persons drafting the original leases were referring to the Leinster Square gardens which constitute an amenity and in Mr Davies' view significantly add to the value of the flats.

33. His witness statement went on to address legal and professional fees under a separate heading but then the statement lost something of its format in that it then turned to the question of managing agents fees, electricity and gas charges, cleaning and other matters some of which no longer form part of Mr Mangano's complaints. In respect of the major works it is suggested by Mr Davies that the works to the building were largely completed prior to Mr Mangano's application leading to the 2017 Decision and confirmed that there was no warranty, although a 5% retention had been made but that we understood had already been released.

34. The witness statement then went on to address the allegations raised in Mr Mangano's witness statement as to the refurbishment works and their standard. In his witness statement he also referred to the ad hoc charges which had of course been dealt with in the 2017 Decision but made the point that the monies had been paid by Mr Mangano. In regard to the boiler works his statement suggested that Mr Mangano had been notified prior to commencement and had made a payment pursuant to such notification. The cost it is said was shown in the accounts for the year ending 2016. There had been some issues with regard to the length of the flues but those had been resolved.

35. At the hearing Mr Davies was asked questions by Mr Loveday. He confirmed that in respect of the service charge accounts they had used the financial statements for the Landlord and the income and expenditure accounts relating thereto. He confirmed that there had been no credit back to individuals if there had been any surpluses at year-end but indeed there had been no requests for any under-payments. He was asked about the service charge accounts and took us to the reserve funds in the 2015 and 16 accounts. These are said to show in 2015 that £27,360 was paid from the reserve fund towards the major refurbishment works and in 2016 a further sum of £111,727 is shown against the major refurbishment works and a figure of £19,800 as against the boiler replacement costs. It was suggested that in that year we would also see lessee demands for £8,469 towards the externals and £12,301 towards a boiler replacement, which was suggested reflected the ad hoc credit payments. Mr Davies asserted that in his view they had implemented the Tribunal decision.

36. He was asked to explain why in the service charge accounts for 2015 there were monies in the reserve fund of £10,000. He confirmed that this was a contribution made by lessees to the reserve fund on the planned maintenance figure of £130,000 over the next eight years acquired it would seem from the costs being incurred in 2015/16. He confirmed that there was no planned

maintenance document in existence. His view was, however, that the members were free to reduce the reserve fund to such a contribution as they felt comfortable in paying. It was his view that the reserve fund could not exist in isolation and that if service charges increased, for example because of insurance, was right to reduce the reserve fund to ease this call on the lessees.

37. Asked about certificates under the terms of the lease, he was of the view that the wording included in each of the accounts by Roberts & Co, Chartered Accountants fulfilled the certification point.

38. On 20th July 2017 Mr Mangano was sent demands, schedule of receipts, tenant's rights and the accounts for the years ending 2014 to 2016, which with an accompanying letter from CRM, indicated that taking into account demands made and payments made, which totalled £36,298.04 there remained an outstanding balance of £7,193.87. It was noted that the figures shown on these accounts produced in 2017 did not appear to vary from the accounts that were produced in the years 2014 to 2016.

39. Questions then followed concerning a letter dated 1st July 2019 which, as is accepted by the Tenant, appeared to include what the Tenant says are the first certificates compliant with the lease in respect of the service charge years ending 5th April 2014 through to 2017. They also include a certificate of expenditure for the year 5th April 2018 with a summary of costs incurred. It was said that these certificates were issued to cover any further arguments that might flow from Mr Mangano concerning the accounts. We were referred to a document at bundle 2, page 162 headed External, Internal Repairs and Redecoration at the Property dated 8th September 2015. This is said to be the final account and shows the original contractor's price together omissions and additions and apportionments between individual flat owners. This is a document to which we will return in due course.

40. Mr Davies was asked about the schedule of account which was to be found in the third bundle at page 19. A figure £337.58 appears on 20th July as an excess re refurbishment as per 2016 accounts. He was asked how this figure was calculated and we were taken to the notes to the financial statements for the year ending 5th April 2016 which showed under major works apportionments internal and externals that there was an excess due at £337.58 showing that the ad hoc charges were less than the final sums due from Mr Mangano. The detailed cross examination of Mr Davies continued with regard to the accounts and Mr Davies was asked why in the letter of 1st July 2019 sending the accounts which are acceptable to Mr Mangano no mention was made of the exercise undertaken in 2017 when financial statements were served. Mr Davies' response was that he thought that they had already certified the accounts in 2017 and therefore was unnecessary to do so in that letter.

41. The questioning then moved onto various specific items of service charges that were in dispute starting with the garden maintenance. Mr Davies was asked by Mr Loveday what garden there was at the Property. He told us that there was a walkway from the rear of the Property to Leinster Square which he thought crossed land which had been demised to the ground floor flats. The pathway was about five yards in length. He was asked why certain expenses in respect

of uneven paving had been included in the specification but he replied that these in fact had been taken out and had not been charged to the Property. This he said was shown in the final account dated 8th September 2015. Some discussion then took place as to the state of the garden in 1976 as compared to the position now with the current leases. We were then taken to an example of the invoice rendered by Leinster Square Gardens Limited, this one being dated 20th April 2015 which refers to an invoice for the garden rate of 10 flats at £157.50 per flat. This represents membership fee or the period 1st May 2015 to 30th April 2016. The invoice for the year before, which was also in the bundle shows that 11 flats were being charged at the rate of £85.50 per flat. Mr Davies told us that the association was aware that Mr Mangano did not want membership of the garden square, although he could not say who had told them this. It may have been something that was discussed with the garden committee. It was put to Mr Davies that the discount shown certainly on the later invoice reflected the Tenant Mr Mangano's non-interest. Mr Davies' response was they charged by the block and they were given a discount to reflect that so that although it refers to 10 flats all 11 are allowed to use the garden.

42. Matters then turned to the insurance. It appears that the problem was that the insurance that is affected by the Landlord included the possibility of claims being made by tenants for water damage to their own flats. The terms of the insurance provision in the lease at paragraph 5(d) indicates *that "Subject to the member to the association a proportionate part of the cost of insuring the building and comprise as part of the service charge to ensuring keep insured the building and every part thereof including the demised premises (but not so as to make the association responsible in respect of loss or damage occurring in or about the interior of the demised premise or from some escape or leakage to or from the demised premises which could be included in a normal contents policy of insurance affected by the member himself) against the insured risks in the name of the association ...."* Returning to Mr Davies' witness statement we found at paragraph 18 that the managing agents used brokers to obtain the insurance and that escape of water is one of the insurable risks. It is denied in the witness statement that the Landlord has allowed leaseholders to entertain inappropriate claims although the issue is raised that Mr Mangano's flat had in fact had a leak which had caused damage. This was not admitted by Mr Mangano.

43. The next area of concern in respect of specific service charge items was cleaning. The issue here was the cost and standard of cleaning. There appears to have been a company called JAS who had cleaned and they had been replaced by Galaxy, having given a lower quote. It appears that Mr Mangano, who is frequently away, had nonetheless been able to review the attendances of cleaners and felt that the evidence he had showed that they were not up to specification. Mr Davies said that the Landlord was in the process of obtaining lower quotes and had one from Galaxy, which resulted in them replacing JAS as the cleaners. This he indicated was not as a result of anything Mr Mangano had said. Some mention was made that the carpets had been stained by the cleaners and although there were photographs it was difficult to discern what may or may not have caused the damage.

44. Matters then moved onto the major works contract. We were told that a 5% retention had been made, although 2.5% had been released initially and the balance after six months. There were questions as to why the costs had not been included in the following year, particularly as there was a six-month retention period. Mr Davies said Mr Stevenson had carried out a final inspection and had thereafter authorised the release of the retention monies.

45. Mr Davies was asked whether or not the various omissions and additions that were shown in the final account had resulted in a complicated contract and it would be difficult therefore to ensure the contractor had complied with same. He did not think so. Mr Davies was then shown a number of photographs that Mr Mangano had taken which he commented upon as best he could.

46. On the next day we heard from Mr Mangano. He had prepared a detailed witness statement just over 20 pages. We had the opportunity of reading this in advance of the hearing and Mr Mangano was merely tendered for cross-examination. His witness statement confirmed that he acquired the lease to the Property in July of 2013 and that since that time his view was that the Landlord and his managing agents had not operated the service charge regime in strict accordance with the terms of the lease. He confirmed that he had been making monthly payments and made reference to the ad hoc payments which had been the subject of the 2017 Decision. He indicated that it was not until recently he had seen proper statements of service charges, although he did see the annual financial statement for the Landlord's accounting years which were not in his view service charge accounts, notwithstanding these financial statements included income and expenditure accounts.

47. He told us of the application he had made in 2015 intending to challenge the service charges for the previous two years and the current service charge year at the date of issue. This he said broadly covered the period since he had acquired the lease including two months' arrears going back to May 2013. The period covered the service charge liability for the years ending April 2014, 2015 and part of the year ending 5th April 2016. We have of course seen and referred to the terms of the 2017 Decision. Paragraph 10 of his witness statement is important in setting the scene so far as the Applicant's view that Mr Mangano is not entitled to challenge matters in these proceedings which had been dealt with in the decision in 2017. He says *"The amounts in dispute were interim charges. The Tribunal did not consider my liability to pay any balancing charges in these proceedings as these had not been levied by the Landlord. Nor did the Tribunal look at the reasonableness of the relevant costs incurred in 2014/15 and 2015/16 service charge years. Although it had been my intention that the Tribunal should consider such costs, as is clear from the schedule of disputed service charges in that application, at the date of the hearing of that application I had not seen any statements of actual service charge expenditure for 2014/15 and 2015/16 service charge years, so I could not and did not challenge these costs at that stage."* He goes on to say at paragraph 11 that the current application relates to balancing charges in respect of the year ends April 2015 and 16 and the balancing in charges for the years ending April 2017, 2018, 2019 and the budgeted costs for the year ending April 2020. In fact that last period was not in dispute.

48. Having set the scene his witness statement then goes to deal with the relevant costs which are referred to as garden maintenance, legal and professional fees, FSA fees, accountancy, sundry expenses, insurance, gas, electricity, cleaning, repairs and maintenance, boiler maintenance, fire prevention equipment, health and safety/water hygiene, management charges. In addition, certainly in the witness statement, allegations were raised concerning entry phone, reserve fund, building refurbishment and boiler replacement works.

49. In fact, a number of these items have fallen away and the agreed list of issues sets out the service charges that were raised before us in these proceedings.

50. Bearing these matters in mind, Mr Mangano was then asked questions by Mr Fieldsend. He was taken through the various photographs produced in his witness statement. On his part it is said that they do show some evidence of works which might be considered to be somewhat substandard. The photographs were taken in the main in 2016 although one or two towards the end of 2015.

51. It was put to Mr Mangano that the findings by the Tribunal in the 2017 Decision indicated his 'unacceptable behaviour and lack of awareness'. He was asked whether he complained about the form of the accounts but no real answer was given. What he did say was that he was concerned to know what was paid and what he was being asked to pay. He did accept that at the end of each year he received financial statements and he was taken to a copy of the year-end 5th April 2015 accounts which showed the internal refurbishment figure of £27,363 indicating what had been spent. Mr Mangano's response was that he did not know what was covered under each heading. He was again taken to accounts for the year ending 5th April 2016 which show the internal refurbishment costs and boiler replacement costs under reserve fund heading. This it was put to him showed what the Landlord had spent and he agreed with that point.

52. On the question of the major works, he was concerned there had been no contract produced. As far as he was concerned there were no inspections, no reports on quality and no report by the surveyor following the last inspection. He was asked whether the reference *"Until recently"* at paragraph 8 of his witness statement meant the 2019 certificates and it appeared that was the case. He said he had received legal advice that the accounts were not in the proper form. It was put to him, however, that the figures shown in the previous documents sent to him in 2017 and before in 2015 were the same as those in 2019. He was asked whether he accepted the underlying information was acceptable but his view was it did not set out in full detail the information that he considered he was entitled to under the terms of the lease. It was again put to him that the figures produced in 2015 are the same as those produced in 2019 and he accepted that that was the case. It was put to him that by the time of the hearing in May 2017, he knew what the costs were that he was being asked to pay and that he knew what had been spent and could question the standard of works. His response was that he had asked but he had not been provided any answers.

53. He was again taken through the photographs and asked whether the outlook into the Leinster Square garden to the rear was something that afforded a

benefit to his property. He maintained that he does not have access and had been told that he could not have access.

54. Asked questions about the cleaning he confirmed that the JAS period was limited for two years, 2016 and 2017, and that the contract with them had ended in early 2017. We were directed to some emails that had been exchanged in 2016. In one that appears to have been sent in June of 2016 forming a chain of emails, there is an objection as to the costs and in an email if 19th December 2016 again Mr Mangano raises the costs of the works and the time being spent. This was in response to an earlier email from the managing agents of 14th December indicating that they were looking at the cleaning contract and had obtained another quote from Galaxy Cleaning who were considerably cheaper. It was recommended that they should be changed. He said that he had spent a period carrying out checks of the cleaning routines, about six to eight weeks, but did concede that he could be abroad between 30 to 40% of the year, having a property in France.

55. The cross examination then moved onto the building refurbishment. It was put to him that Mr Stevenson the surveyor for the Landlord had been at the last hearing and could have answered questions as to the scope of works. He was taken through the photographs he had taken accepting that some were not of terribly good quality. In his view they did show that there were, for example cables, allowed to dangle to the exterior of the building, which should have been attached and this suggested a lack of management. In addition, there had been problems with the boiler, the Property being a listed building, and works had to subsequently to be undertaken to the flues to comply with the Local Authority's requirements. He did not consider that there was a randomness to his challenges. He believed he had raised proper queries, which resulted in works being carried out which were required for many years. He said he had concerns about the building and on the works, themselves was unhappy his windows had been painted shut and appeared not to have been raised in the snagging. If he had been provided with a copy of the contract with a guarantee that he thought should be for five years, he would have known his position.

56. Matters moved to specifications and the use of other contractors but Mr Loveday on behalf of Mr Mangano confirmed that tendering was not a matter in dispute and that they were relying on a poor specification, which had resulted in the loss of control of the contract and the project.

57. Mr Mangano maintained that he had always acted in the best interests of the Property and of the company.

58. On the question of the Scott Schedule he confirmed that he had now seen some receipts and invoices and accepted that some issues were no longer in dispute. He was however was of the view that the concerns he had raised were justifiable. He was asked whether he actively looked for conflict, but he denied that.

59. The only other evidence before us was the witness statement of Mr Strickler, which was not challenged.

60. On the following day we heard from both Counsel, the evidence from the parties having been concluded. Both Mr Fieldsend and Mr Loveday provided us with written closings which were of great assistance and, as we have indicated, also provided us with the agreed list of issues.

61. We hope that both Counsel will forgive us if we do not go through their written closings in great detail at this stage. They were of great assistance to us in formulating our decision and we are grateful to them. We will pick up the points they make in the findings section of this decision.

FINDINGS

62. We are grateful to Counsel for producing their agreed list of issues. We set those out above and will deal with the various issues separately in this findings section.

63. We turn firstly therefore to the scope of challenge in respect of major works and Mr Mangano's ability to do so given the findings made by the Tribunal in the 2017 Decision.

64. We have considered in some detail the findings of our colleagues in the 2017 Decision. The background and Tribunal's approach is self-explanatory and it seems no reason for us to repeat what was said therein. One issue that became relevant in respect of Mr Mangano's ability to challenge issues particularly in the service charge year 2016, is to be found at paragraph 22 of the 2017 Decision. In that paragraph it appears that in November of 2016 the Tribunal requested particularisation of the breaches of the lease and the relevant RICS code of conduct in respect of Mr Mangano's appointment of manager application. It appears that Mr Mangano sought to amend his case by relying on other breaches and provisions of the code. We do not consider that this proposal for amendment had anything to do with the service charge claim. The suggestion that Mr Mangano had "ample opportunity to marshal and particularise his case" we find is limited purely to the appointment of manager.

65. The service charge claims that were dealt with by the 2017 Decision are the years 2013 to 2015. The items that were to be dealt with are not wholly clear. Mr Mangano reduced the scope of challenge and we do not have access to the papers before our colleagues in 2016. There is a challenge to management costs and other items where it is said Mr Mangano put the Landlord to proof of expenditure. However, in July 2016 a challenge was also made to the contractual basis of the charges, this we think following a change in Counsel. What the Tribunal in 2017 then said was that *"by the date of the hearing, the service charge challenge had been narrowed and the following items were in issue."* Those are listed as the monthly interim charges, the ad hoc charges and the relevant costs. Those relevant costs appear to relate only the years ending 2014 and 15 and are management's costs and those of accounting, legal and professional FSA fees and minute taking. The decision on those is clear from this 2017 Decision.

66. The decision then goes on to deal in some detail with the provisions of the lease in particular paragraphs 4 and 5 of the fifth schedule and the certification

required at paragraph 6. Our view of the Tribunal's decision is that they split the account requirements so that the certification was met by preparing and serving on each member the service charge accounts in respect of the accounting period showing where applicable any excess or deficiency of the service charge over the interim charges. The question of the certificate, in our finding only arises upon the request made by the Tenant to the association. We have borne that in mind in our decisions which follow.

67. Of importance in this case and certainly a matter upon which the Applicant hangs its hat, is to be found at paragraph 56 of the decision which says as follows: *"In conclusion we find the monthly interim service charges are payable under the lease. We find the items of cost challenge are payable under the lease. Although we do not find that the ad hoc charges for major works were payable as interim charges, we find that they will become payable as service charges following service of a proper certification of costs in accordance with the lease terms."* Further support for this proposition is to be found at paragraph 26 of the decision issued on 26th October 2017 reflecting matters relating to costs, section 20C and request for permission to appeal by Mr Mangano. At paragraph 26(b) the Tribunal says as follows*: "The Tribunal found that the charges for major works were not recoverable as interim charges but would be payable (subject to due process) as actual final charges."* The question therefore to consider is what does subject to 'due process' mean. We are, however, to a certain extent helped in that the sub-paragraph (c) concerning recoverability of certain relevant costs deals with the years up to 2014/15. The submissions did not relate to 2015/16 save for a request for a finding on the payability of interim charges. Furthermore, the Tribunal's comments at paragraph 31, which says as follows: *"So far as the mechanism for interim charges is concerned, the Tribunal relies on the reason in its decision. Furthermore, other than the relevant costs dealt with above, the amount of final service charge for each of the relevant years is not challenged. Accordingly, permission to appeal is refused."* We have read that to refer to the relevant years being those ending April 2015.

68. Accordingly, the views put forward by the Landlord that Mr Mangano is not entitled to challenge the relevant costs of the refurbishment work or boiler replacement works is not something that we accept. The position is that the final accounts in respect of the refurbishment works and boiler replacement works seem not to have been issued until the service charge year ending April 2016. Furthermore, it seems clear to us that the Tribunal in the 2017 Decision was not dealing with the reasonableness and payability of the costs of the refurbishment works or the boiler replacement works. The phrase 'subject to due process' we find includes the ability to challenge same. We find that the 2017 Decision on the ad hoc charges, for which there was no contractual entitlement, sets out the costs that were incurred and which would be payable subject to Mr Mangano's entitlement to still challenge those under section 19 of the Act.

69. We are very reluctant to shut out Mr Mangano's ability to review the reasonableness of the refurbishment works. We were told earlier in the proceedings that the quantum of the boiler replacement works was not in issue and we will deal with that separately under our consideration of the impact of

section 20B. Mr Fieldsend raised with us the various authorities in respect of matters relating to res judicata and we have noted those. In addition, the principle in Henderson v Henderson is put to us. However, it seems that at the time of the hearing whilst it may have been possible for Mr Mangano to have undertaken a cross-examination of Mr Stevenson the surveyor, it does not seem to us that a challenge to the reasonableness and payability of the major works was within the scope of matters to be dealt with by the Tribunal in the 2017 Decision. The application was for earlier years, save the monthly interim charges. It is we believe accepted that final accounts for these works, were not available until 2016 at the earliest and it is reasonable for Mr Mangano to deal with the standard of the works as a separate issue. We are satisfied, therefore, that there is no res judicata nor are there any other matters which would prevent Mr Mangano from challenging the costs of these major works.

70. Suggestion is made that there had been some form of agreement under section 27A(4) by reference to the Cain v Islington case. In that case an appeal was made by Mr Cain against the decision of the First Tier Tribunal. That appeal was dismissed. What the decision of HHJ Nigel Gerald says at paragraph H5 is an agreement or admission for the purposes of section 27A(4) may be expressed or implied or inferred from facts and circumstances. The agreement or admission must be clear, the finding being based upon the objectively ascertained intention of the Tenant. The effect of sub-section 27A(5) to preclude the finding of an agreement or admission by reason only of the Tenant having made payment, is that the making of a single payment on its own will never be sufficient but the making of multiple unqualified payments even of different amounts over a period of time may suffice. The decision goes on to deal with other matters. We have noted Mr Fieldsend's submissions on this point but we cannot agree with him. We do not consider that the Tribunal in May of 2017 put its mind to the question of the reasonableness of the works in respect of the major refurbishment and the boiler. They were addressing the contractual obligations imposed on Mr Mangano and the fact that the ad hoc payments did not fall within the Landlord's contractual entitlement. We can see nothing in that decision which challenges the costings and as we have indicated above we do not consider that this is a Henderson v Henderson case as there were still outstanding issues concerning the total costs for the refurbishment works and as we have said above we do not consider the Tribunal was dealing other than with some minor elements in respect of the 2016 accounts. Those 2016 accounts did not form the basis of the original application by Mr Mangano. We are not satisfied that there was a clear determination of the amount payable and when payable in respect of the refurbishment works as it was not a matter in our view that was before the Tribunal.

71. Insofar as the Dewer Hogan letter is concerned, it seems to us this is hardly an unequivocal acceptance of liability. The letter says that the monthly service charge payments have been cleared and in respect of the internal and external works there is a willingness to pay, however it is couched in terms that Mr Mangano does not *"consider proper due diligence was carried out by the society that CPM has managed the process poorly as a consequence of which the schedule of works were poorly defined."* It seems to us to leave it open to challenge and would not therefore fall within the provisions of section 27A(5). It does not seem to us that any evidence of substantial merit was placed before

us to show that the Landlord had placed reliance on this letter and that it was detrimental reliance. It is now known and established that the demands made in respect of the internal and external works were not in accordance with the terms of the lease and for which strictly speaking therefore Mr Mangano did not have a contractual liability.

72. We have made little comment on the question of the boiler works other than to say it is our understanding that it has been conceded by Mr Mangano that the quantum of these works is not in issue merely the question as to whether or not compliance with section 20B has been fulfilled.

73. We therefore turn to that element.

74. We have considered Mr Loveday's opening skeleton argument in respect of the limitation works as well as his closing submission. We have noted also all that was said by Mr Fieldsend on behalf of the Landlord. In reaching our decision we have borne in mind the various authorities and in particular the decision of Morgan J in Brent London Borough Council v Shulem B Association. It is conceded by the Applicant that the provisions of section 20B(1) are not of assistance and instead we need to consider the written notification required for the purposes of section 20B(2). The per curiam comment in the Shulem B case is noted "*where a written notification served on a tenant for the purposes of section 20B(2) of the 1985 Act specifies a figure for costs and the landlord later serves a service charge demand which takes into account a figure for costs incurred which is greater than specified in the written notification, the notification will be effective in relation to the figure specified in it but not to any excess over that figure.*"

75. The consideration of requirements of section 20B in the Shulem B case start at paragraph 54 and continue through to paragraph 59 which are set out below.

> 54 The next question is whether the letter of 23 February 2006 was a written notification for the purposes of section 20B(2). The subsection requires the notification to relate to two matters. The first matter that must be noted is that those costs had been incurred. The second matter is that the tenant would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge. The parties do not agree as to the extent of the statutory requirements. In particular, they do not agree as to what information has to be given to satisfy the requirement that the tenant is notified that those costs have been incurred It is clear from the decisions of the county court and the various tribunals that this question is not without difficulty and the answers to it which have so far been provided are not wholly consistent. It is not suggested that I am bound to follow any of the earlier decisions. I have considered what the learned judges in those cases have said on the subject. Their remarks have been helpful to me as they have revealed the range of possible interpretations of the statutory wording and the facts of the cases have illustrated the kinds of difficulties that can arise in practice. However, with respect to those other judges, I do not think that it is necessary or appropriate in this judgment to set out passages from the earlier decisions. With the benefit of my reading of those judgments, I will approach the task by addressing the language used in section 20B(2) and also by considering the purpose of section 20B as a whole.

55 A written notification under section 20B(2) must state that those costs had been incurred. Those costs refers back to the relevant costs in question and this in turn refers back to the costs in question for the purposes of section 20B(1), that is, the costs which the lessor wants to take into account in determining the amount of a service charge but which costs were incurred more than 18 months before a demand for payment of the service charge. Thus, the phrase that those costs have been incurred can be expanded so that it reads that the relevant costs which were incurred more than 18 months before the relevant demand for payment of the service charge have been incurred.

56 Counsel for the lessee submits that a notice for the purposes of section 20B(2) must state the amount of the costs which the lessor states have been incurred. Counsel for the lessor submits that it is not necessary to state the amount of such costs. He submits that it is sufficient that the notification states that the lessor has carried out works or provided relevant services. Put that way, that submission cannot be right. Section 20B(2) does not require the notification to state that work has been done or services have been provided; it requires the lessor to state that costs have been incurred. It may be that counsel for the lessor would submit that it is sufficient if the lessor states that it has done works or provided services and has incurred costs (unspecified) in relation to those works or services. In my judgment, there are a number of objections to the lessor's submission on this point. The first is based on the language of section 20B(2). As expanded in the way I have described, the subsection appears to require the lessor to identify the costs which have been incurred so that when one comes to apply section 20B(2) to the relevant notification one will be able to say whether the costs, which the lessor wants to take into account in determining the amount of the service charge, were notified to the lessee. A second objection is that if it is clear that a statement that work has been done or services have been provided does not suffice, I do not see that any real purpose is served if the lessor adds the statement that it has incurred unspecified costs in relation to the works or services. The lessee would no doubt assume in any event that the lessor had not obtained the works or services free of any charge.

57 If the notification for the purposes of section 20B(2) has to state some information as to the amount of the relevant costs, is it sufficient if the lessor states that it does not know what the costs have been but instead states that it knows what it expected the cost to be in advance of the work being done? In my judgment, subsection (2), taken literally, appears to require the lessor to state the costs it has actually incurred. A statement that, in advance of the work, it expected to incur a particular cost does not give the necessary information.

58 I have considered what a lessor should do if it knows that it has incurred costs but it is unable to state with precision what the amount of those costs was and it is concerned to serve a notice under section 20B(2) to stop time running against it. In my judgment, there is a clear practical course open to a lessor in such a case. It should specify a figure for costs which the lessor is content to have as a limit on the cost ultimately recoverable. In my judgment, a lessor can err on the side of caution and include a figure which it feels will suffice to enable it to recover in due course its actual costs, when all uncertainty has been removed. If a lessor states that its actual costs were £x that will be a valid notification in writing for the purposes of subsection (2) even though the lessor knows that it may turn out that the costs will be somewhat less than £x. If the lessor wants to ensure that the lessee is not misled by such a notice, it will be open to the lessor to explain that although it is making a clear statement that its costs were £x, it hopes

that it might be in a position later to state that the actual costs were less than £x. An example might be where the lessor is in dispute with the builder as to the sums payable to the builder. The lessor could properly notify the lessee that the builder is claiming a sum which means that the costs will be £x but the lessor is attempting to negotiate with the builder so that the resulting costs will be less. In such a case, the lessee would not be misled and the lessor would have protected itself by making a statement that the costs it had incurred were £x. In any event, it is my view that if a lessor states that the cost was £x, it satisfises the subsection even in a case where it is not certain as to what the costs will eventually turn out to be. If the lessor states that the costs are £x, and it later puts forward a service charge demand based on a smaller sum, then the statement of the greater amount includes a statement of the lower amount. In the present case, no issue arises as to what the legal result would be if the section 20B(2) notice referred to £x and the lessor later put forward a service charge demand which takes into account a figure which is greater than £x. My view is that the lesser sum of £x does not include the excess over £x so that no notification for the purposes of the subsection was given in relation to the excess.

59 The second matter which must be stated in a notification under section 20B(2) is that the tenant would subsequently be required under the terms of his lease to contribute to the costs by the payment of a service charge. Taken literally, this does not oblige the lessor to state the resulting amount of the service charge. On this reading, there will be a valid notification for the purposes of the subsection if the lessor notifies the lessee that it has incurred costs of £x on certain service charge matters without telling the lessee what sum the lessee will ultimately be expected to pay. It may be that in some cases, the lessee will know what proportion of the total costs it will have to pay. The lease in question may identify a xed percentage of service charge costs. However, many leases do not specify a xed percentage. It would no doubt be of more use to a lessee to be told what sum it will be expected to pay by way of service charge but, in my judgment, the words of section 20B(2) do not clearly so require.

76. The wording of Etherton J in Gilje v Charlegrove Securities Limited is of assistance in this case. As recited by Morgan J in his judgment Etherton J said this:

"Finally, I agree with [Counsel] that so far as discernible that policy behind section 20B of the Act is that the tenant should not be faced with the bill for expenditure of which he or she was not sufficiently warned to set aside provision. It is not directed at preventing the lessor from recovering an expenditure on matters, and to the extent, of which there was adequate notice."

Morgan J is in his judgement indicated that the terms of section 20B(ii) confer rights for the benefit of the lessor.

77. We therefore need to consider whether any documents given to Mr Mangano could constitute a notice under section 20B(2). In Mr Fieldsend's closing submissions at paragraph 30 he draws to our attention a number of relevant documents. We have noted what is put forward. In response Mr Loveday follows those arguments and makes his own submissions. We will put aside for the moment the final accounts served in September of 2015 but consider the

financial statements for the years 2014/15 which was at bundle three, page 38 and the financial statements for the following year again at bundle three at page 46. We must confess that we find those difficult to follow. The costs of the works appear in the reserve fund but do not appear in the detailed income and expenditure account. It would in our findings be very difficult for a tenant to assess what liability he or she is being asked to meet on the basis of both the 2015 and the 2016 accounts. The comments made by Mr Loveday concerning the revised financial statement service, which was in June of 2017, and the impact of the 18-month rule are correct. They are out of time.

78. However, we consider that the Landlord in this case is saved by the final account which is dated 8th September 2015, which we have referred to above) but which it appears was not served until 29th September 2015. With this final account, were emails from Mr Stevenson ending with one dated 29th September in which he attached the final account, he considering it providing an adequate breakdown of costs. In addition, the schedule of works was also attached. It seems clear from Mr Mangano's email that he was able to make enquiries because on 29th September he queried a number of matters including repairs to rear boundary wall, rendering, scaffold, alarm etc. An earlier email from Mr Stevenson dated 16th September 2015 gives further narrative to the final account and states *"This gives a final cost for the works applicable to the service charge account to which is apportioned in accordance with the lease terms and results in a small credit against the schedule."* When we look at the final account it is quite clear that it was not on the contractor's original price but includes omissions and additions and subsequently the additional costs leading to a net charge of £135,354.84. Under schedule A there is an apportionment of those costs, which for Mr Mangano shows his 13.9% and the credit that may be due. Given that he was fully aware of the costs that were to be incurred by reference to the ad hoc payments, albeit that they were not contractually demanded, it seems to us that it cannot be argued that Mr Mangano was not aware of costs that were coming in his direction, the value of those costs and the impact that that would have on his service charge liability. Our finding, therefore, is that this final account does contain sufficient to provide the notification required coupled with the emails under section 20B(2). However, it will be limited to the amount shown on this demand. Any additional sums that may have been found to be due would seem to us not to be recoverable under the Gilje principles.

79. These deal with the major refurbishment works and we need to consider what the position is with regard to the boiler works. We have already rejected the idea that the financial statements served in 2015 and 16 provide any assistance to the Landlord. The question then is whether there is any document which could constitute a demand within section 20B.

80. We consider such a document can be found in the fourth bundle at page 40. It is a demand dated 20th October 2015 headed 'Application for Rent and Service Charge' and by reference to Mr Mangano's flat there appears on 6th October 2015 a charge shown as 'boiler and cylinder replacement' for £1,987.70. The receipt of this demand was not challenged by Mr Mangano. It seems to us that this is a valid demand for the purposes of section 20B. We anticipate that there may have been additional costs over and above the £1,987.70 but have seen no

further demands that would cover any additional item over and above that figure. Accordingly, whilst we find that this would constitute a demand that complies with section 20B(2), it does mean that any further costs that might have been incurred in respect of the boiler and cylinder replacement would fall foul of section 20B(1) and thus not be recoverable.

81. Accordingly our finding in connection with section 20B is that we agree with the Landlord's submissions that the costs are recoverable, although in the case of the refurbishment works these are subject to challenges that Mr Mangano made both in his written statement and at the hearing, to which we will now turn.

82. At paragraph 33 onwards of Mr Mangano's witness statements he raises his concerns about the adequacy of the refurbishment works. In particular, the question of the poor quality of work is contained at paragraph 45 supported by some photographs, which we have had the opportunity of seeing. We will return to those in a moment. He refers to the building having been painted externally a different colour but the photographic evidence he provided did not assist us in this regard. We were told that it had been painted in the colour that existed previously. We do not accept that there is any challenge that we can consider in this regard. Insofar as the various photographs are concerned, these were taken a little while after the works were completed but nonetheless there is some truth in Mr Mangano's comments, for example, the threshold to the front door is already showing bare wood, this photograph having been taken May of 2016. The paint on the window sills shown on another photograph again taken in May 2016 from his flat, shows some flaking to the masonry and the bannister rail in the common parts has not been finished to a very high standard.

83. We should also perhaps comment on Mr Mangano's suggestion at paragraph 44 of his witness statement that the contract should have had a five-year warranty. Our experience would tend to suggest that external and indeed internal decorative works would never carry a five-year warranty. Indeed, it is not unusual for certainly external repairs and decoration to be carried out on a five-year cyclical basis. It does perhaps show some evidence of Mr Mangano's unreasonable attitude to some issues. Furthermore, it is not clear to us whether Mr Mangano raised a number of the concerns in respect of the standard of work with the Landlord before the snagging period had passed. In any event, the items that he sets out at paragraph 45 whilst in some cases we agree with them, would not justify his suggestion that the overall costs of the refurbishment work could be reduced by 25%. There is in our finding justification for some criticism. However, no alternative other than the 25% reduction is put forward by Mr Mangano and we consider that that is too much of an allowance to make. It is very difficult, in fact impossible, for us to estimate what amount if any should be applied to these costs based on the comments of Mr Mangano and the photographs.

84. We bear in mind that we are looking at this in 2020, some five years after the works were completed. They are probably due for renewal. We will certainly say that we hope that better specification, supervision and snagging arrangements are put in place this time round. Accordingly whilst we have

sympathy with Mr Mangano on what would appear to be the longevity of the works that were carried out, we do not consider that it is appropriate for us to make a 25% reduction nor indeed any reduction to reflect the matter given the passage of time since the works were completed.

85. At this point it is perhaps appropriate for us to express some concern as to Mr Davies' position. He wears two hats and they do not always sit comfortably with each other. He is the solicitor for the Landlord and runs the management company. It seems to us he somewhat descended into the arena in attempting to encourage the removal of Mr Mangano from the rights he had as a leaseholder and as a member of the Landlord Company. He needs to be careful going forward as there is no doubt in our view, as found by our colleagues, that the relationship between Mr Davies and Mr Mangano is not assisting the other leaseholders.

86. On the remainder of the relevant costs we deal then with the question of the gardening. The issue for us to consider is whether or not garden maintenance expenditure falls within the expression 'Total Expenditure' used in schedule 6 of the lease.

87. Total expenditure is defined as the *"Total expenditure incurred by the association in any accounting period in carrying out its obligations under this lease and any other cost and expenses reasonably and properly incurred in connection with the building, including without prejudice to the generality of the foregoing (a) the cost of employing managing agents (b) the cost of any accountant or surveyor employed to determine the total expenditure and the amount payable by the member hereunder".*

88. It seems to be accepted that there is no un-demised garden grounds at the Property. It may be that the ground floor properties have some area of paved landscaping or garden. We cannot say as no photographs were provided and we were not able to inspect. We are referred by Mr Fieldsend in his closing submissions to schedule 5 paragraph 13 which says "*landscaping, maintenance and cultivation of the gardens and the common parts"* and paragraph 21 of the 5th schedule which says "*all costs whether or not referred to above incurred by the association (including surveyor's fees and legal fees) as the association shall deem necessary or advisable in the general management, maintenance, safety, convenience and administration of the building including those incurred in receipt of any notice or order served under any statute or order, regulation or byelaw on the association, the member of any flat or any occupier of any flat of the building including the repair and replacement of damaged caused to the demised premises including damage to the internal decoration of the demised premises as a direct consequence of upon any defect to the building".*

89. It is right to say that the common parts definition does refer to garden. In addition, there is reference to Adjoining Land in the definitions section but unfortunately that is itself by reference to land shown for identification only hatched green on the plan. As is so often the case, there is no colouring on the plans that we have. However, it seems to us that the adjoining land cannot be the Leinster Square gardens to the rear of the Property. One only has to look at

the exceptions and reservations contained in the lease in the third schedule at paragraphs 5 and 6 which reserves the right for the Landlord to build on the Adjoining Land and to grant rights and at paragraph 6 refers to access via the Adjoining Land from roads and paths fronting the Property. Accordingly, in our finding the Adjoining Land cannot be the garden run by the Leinster Square Association. The fact that there may be direct access from the Property to the garden via a gate, which may or may not have a key, does not mean that the garden forms part of the Property. We find also the provisions of paragraph 21 of the 5th schedule are being stretched beyond credulity if the costs referred to thereunder can include the garden land which is not within the general management of the Landlord.

90. Contrary to Mr Fieldsend's suggestion that there is nothing surprising in the construction of the lease that provides for costs incurred by the Landlord in landscaping gardens which it does not own, we find that indeed would be a surprising construction. Accordingly, we do not accept that the fee is captured by paragraph 13 of the schedule and the same applies to paragraph 21. It is no doubt that there is some convenience and benefit to the residents by having this garden and the landscaping and control that is a term of the membership of the Association. However, that is not in our finding a service charge which can be recoverable from the lessee. If they choose to contribute towards the costs of the garden and they are happy for the management company to agree terms with the garden association, then all well and good but they should not be recovered as a service charge. That being said, there does appear to be one service charge in the year ending 2017 which was for clearance of the courtyard at a total figure of £288 inclusive of VAT. That is the only invoice that we have found by going through the documentation that does not relate to the subscription. It is noted also that in the Roberts list of invoices incurred to the year ending 2017 it just shows the garden subscription. In those circumstances we take the view that the costs of the garden association are not a service charge and Mr Mangano should not be required to contribute towards them. The corollary of that of course is that he would appear to have no right to use the garden.

91. The next matter that we need to consider is the question of the insurance premium. There is in the evidence before us no sustainable challenge to the premiums. We are not aware that Mr Mangano has himself gone to seek alternative quotes on a like for like basis but has merely suggested figures that he thinks may be appropriate for the policy. We have already set out the relevant wording. It is unusual that this policy includes internal damage to a lessee's flat caused by water escape. We do however remind ourselves that this is a building that is owned by the lessees and it is open to them to include such level of insurance, provided it is within the terms of the lease, as they think reasonable. The fact that there may have been a substantial claims history is a matter of fact. There is no evidence before us to show that the Landlord has failed to implement the terms of the lease and the insurance policy and to suggest that there has been a systemic problem with the insurance cover is in our findings not correct. The claims have been made, there is no evidence that they were wrongly submitted. That will inevitably have an impact on the insurance although we understand that that has tailed off. The suggestion by Mr Mangano that there should be a cap of £6,000 is not appropriate and we

therefore reject his claim that the insurance premiums for the years in question have been too high.

92. The next matter we turn to is the question of cleaning. This relates to only two years. As we understand it from the evidence, JAS who started cleaning in May or June of 2015 appear to have undertaken cleaning on a weekly basis. The Landlord's agents had already begun investigation into a new cleaning contractor when Mr Mangano raised a query by an email, which we have referred to above. There is no evidence from any other person that the cleaning standards were poor and Mr Mangano on his own admission accepts that frequently he is not at the Property. In those circumstances given that the managing agents have moved to change the cleaning arrangements and thus reduce the costs, we cannot accept that the cleaning is so unreasonable as to not be recoverable. That is not to say that the cleaning costs are not quite high, given as we understand it there is a limited amount of common parts that require attention. No alternative figure is put forward by Mr Mangano. The introduction of Galaxy, whose monthly costs now appear to be for the period in question £136.11 are we find reasonable and given the lack of alternative suggestions from Mr Mangano are not willing to make a reduction in connection with the cleaning costs for the years in dispute. It is we think also fair to bear in mind that there has been no challenge to the cleaning by the other leaseholders. As Mr Strickler said in his witness statement, which was not challenged, the members of the Landlord have not raised objections to the accounts over the years and he believed that the annual service charges were of a reasonable level from his viewing of comparable blocks. Also, he was not aware of any objection from other members about the reasonability of current service charges save of course the Applicant.

93. The next item is the question of management fees. These were found to be reasonable by our colleagues for the years 2014 and 15 in the 2017 Decision. On the question of management, the main challenge is to the standard of accounting by the management company CRM. It has not been without its problems it is fair to say and indeed those problems to an extent resulted in the 2017 Decision. However, the accounts are approved by accountants and the sums charged each year on a flat by flat basis would not seem to us to be unreasonable given the location of the Property. Certainly, Mr Strickler in his witness statement found nothing to complain about so far as the management was concerned. As he said at paragraph 3, he is satisfied with the service of the management agent, considers it on a par with what he would expect from an agent in this situation, that they are fully responsive and remain supportive of the building. There may be some shortcomings, but we hope that those will now be historic. As we have indicated, the fees are not unacceptable and in those circumstances we do not consider that Mr Mangano's suggested reduction of 25% being something, if we may use the phrase, of an 'ad hoc' suggestion is not one that we can find favour with.

94. Finally, for the purposes of this decision, we turn to the question of the sinking fund. The complaint appears to be that making demands in the region of £5,000-£10,000 for various service charges years without any planned maintenance programme in position is unreasonable. It is fair to say that they have something of a random nature. In Mr Davies' evidence he told us that he

had in his head at least a planned maintenance arrangement going forward based on the costs that they had incurred in 2014/15. We bear in mind that this is not a commercial landlord. This is a landlord that is owned by the leaseholders. To an extent it is for them to decide what they consider is a reasonable amount of money to put into reserve. Clearly, a reasonable amount is appropriate, but we cannot see that the costs requested to be included in the reserve fund for the years in dispute are so unreasonable as to make them irrecoverable. It may well be that the reserve funds should be greater and that is something that the leaseholders will need to consider. We however do not propose to do away with the reserve fund contributions nor in some way to find that they should be higher than they are. It is in our view, given the circumstances of this Property, reasonable for the leaseholders to have a say as to what monies they wish to insert into the reserve fund on an annual basis.

95. We will leave the question of any cost orders and reimbursement of fees until the parties have the chance of digesting this decision.

96. If it is of any help to the parties, we cannot see that either side has acted in such a manner as to be classified as unreasonable within the provisions of Rule 13 of the Tribunal Procedures (First Tier Tribunal) (Property Chamber) Rules 2013.

Judge: Andrew Dutton

A A Dutton

Date: 30th November 2020

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.