FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/LIS/2021/0009**
HMCTS	**:**	**V: CLOUD VIDEO PLATFORM (CVP)**
Properties	**:**	**Unit 54a Sherborne Street, Birmingham, B16 8FR**
Applicant	**:**	**Professor L Pericolo**
Representative	**:**	**Duncan Lewis Solicitors**
Respondent	**:**	**Jupiter (Phase 3) Management Company Limited**
Representative	**:**	**Counsel – Mr J Craggs, instructed by Realty Law**
Type of Application	**:**	**Applications under sections 27A and 20C of the Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for the liability to pay administration charges**
Tribunal Members	**:**	**Judge M K Gandham** **Mrs S Hopkins FRICS**
Date of Hearing	**:**	**30 September 2021**
Date of Decision	**:**	**4 November 2021**

DECISION

COVID-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing which had been consented to by the parties. The form of remote hearing was Video (V: CVP). A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing/on paper. The documents referred to were contained within the parties' bundles, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal, the Tribunal directed that the hearing be held in private. The Tribunal had directed that the proceedings were to be conducted wholly as video proceedings; it was not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who were not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction was necessary to secure the proper administration of justice.

Introduction

1. On 19 February 2021, the Tribunal received an application from Professor Lorenzo Pericolo ('the Applicant') under section 27A of the Landlord and Tenant Act 1985 ('the Act') to determine whether the service charges demanded for the service charge period 1 January 2020 to 31 December 2020 were payable, and the amounts which were reasonably payable, in respect of the leasehold property known as Unit 54a Sherborne Street, Birmingham, B16 8FR ('the Property'). In addition, the Applicant made applications under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') in respect of costs.

2. The Applicant is the current lessee of the Property under a lease dated 9 August 2019 made between (1) Sherborne Street (Developments) Limited, (2) the Applicant and (3) Jupiter (Phase 3) Management Company Limited ('the Lease').

3. The Property is located within a development containing 250 units, car-parking and grounds within the centre of Birmingham ('the Development'). Jupiter (Phase 3) Management Company Limited ('the Respondent') was incorporated to provide services for the lessees and manage the Development and Pennycuick Collins are the Respondent's current managing agent. The application related to the reasonableness of on account payments demanded in 2020 by the previous managing agent, Savills, on behalf of the Respondent.

4. Directions were issued to the parties on 9 March 2021. Following receipt of the hearing bundle, a further Directions Order was issued on 14 June

2021 requesting additional information, including any alternative quotes the Applicant wished to rely upon. The Tribunal also confirmed that it did not consider that the matter was suitable for a paper determination and that an inspection and hearing would be required.

5. In accordance with the further directions, the Tribunal received from the Respondent a witness statement from Mark Mansell (a Senior Property Manager at Pennycuick Collins) with various exhibits. The Tribunal also received a further witness statement from the Applicant in reply.

6. The matter was listed for an inspection to take place on 29 September 2021, followed by an oral hearing via CVP on 30 September 2021.

7. Following the inspection, the Tribunal requested and received a copy of a EWS1 form (dated 28 September 2020) and Fire Risk Assessment Report (dated 29 September 2020), commissioned by Pennycuick Collins. The Tribunal also requested and received following the hearing, a plan of the lower basement car park and copy correspondence between Mark Mansell and Impact Security Solutions.

8. The Applicant's Statement of Case confirmed that the application related to the reasonableness of the following charges detailed in the 2020 Budget:

    - the management fees;
    - the costs of the building insurance premium;
    - the costs for the additional security; and
    - the costs for the maintenance of the lifts.

9. The Respondent's Statement of Case included an application for an order for wasted costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

The Inspection

10. The Tribunal inspected the Development on 29 September 2021. Mr Winarskie (a solicitor from Duncan Lewis Solicitors) attended on behalf of the Applicant, who was unable to attend as he was abroad. Mr Craggs (counsel for the Respondent), Mr Och (the Estates Manager), Ms Cannon-Leach (a Director of Pennycuick Collins) and Mr Mansell attended on behalf of the Respondent.

11. The Development spans an area between Sherborne Street and Ryland Street in the centre of Birmingham, in the middle of two similar developments. The Development encompasses 5 different sections – Europa 1 (52 Sherborne Street), Europa 2 (53 Sherborne Street), Placido (34 Ryland Street), Galilean (36 Ryland Street) and Calisto (38 Ryland Street) – in addition to Units 54 Sherborne Street, 54b Sherborne Street and the Property, which are located at ground level beneath the apartments at 53 Sherborne Street.

12. The Development is unusual in its layout, with each building in the estate having a slightly different configuration and external appearance. The grounds include a two level carpark, garden areas and steps in a central courtyard. The Development also includes pavements, steps and raised planting beds which run along the pedestrian side boundaries of the buildings giving access between Sherborne Street and Ryland Street on either side of the Development.

13. The Property is a ground floor flat and, similar to Units 54 and 54b, was originally intended to be a commercial unit. As such, there is direct access to the Property from one of the side pavements, rather than through a communal entrance as is the case with the majority of the apartments. The Property is self-contained, however, the electric meter for the Property is located in the communal entrance hall for the apartments at 53 Sherborne Street. In addition, the car parking space can be accessed via the communal stairwell or lift.

14. The Tribunal carried out a limited inspection of the internal parts, encompassing the communal entrance to 53 Sherborne Street and the stairwell access to the carpark. The communal entrance included two separate rooms, one containing post boxes for the 44 apartments at 53 Sherborne Street and the other from which the lift and stairwell to the apartments could be accessed. This second room also contained the cupboard in which the electric meter for the Property was located.

15. The Development appeared to be in a good general state of repair.

The Law

16. The relevant provisions in respect of liability to pay and reasonableness of service charges are found in sections 19 and 27A of the Act (as amended), which are set out as follows:

Section 19 Limitation of service charges: reasonableness

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

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

(b) where they are incurred on the 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 27A Liability to pay service charges: jurisdiction

(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.
…

17. Section 20c of the Act (as amended) provides:

Section 20c Limitation of service charges: costs of proceedings

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

18. The relevant provisions in respect of limiting the liability to pay an administration charge in respect of litigation costs are found in paragraph 5A of Schedule 11 of the 2002 Act (as amended), which provides:

Paragraph 5A Limitation of administration charges: costs of proceedings

(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 or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	*The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court*
First-tier Tribunal proceedings	*The First-tier Tribunal*
Upper Tribunal proceedings	*The Upper Tribunal*
Arbitration proceedings	*The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.*

The Lease

19. The Applicant, under clause 4.4 of the Lease, covenanted with the lessor and the Respondent to pay to the Respondent the "*Material Charges Percentage*" in half-yearly instalments in advance on 1 January and 1 July in each year.

20. In the Lease, the Material Charges Percentage referred to the percentage payable by the tenant towards the costs for the maintenance of the "*Building and the Development*" and the maintenance of the "*parking space and access and facilities thereto*". The Respondent had separated the Material Charges Percentage into two items, charging a separate percentage towards the costs of the maintenance of the Building and Development and a separate percentage towards the maintenance of any parking space demised with the unit.

21. The Applicant's application related to matters concerning the estimated costs towards the first of these items (the Building and Development) and, under the terms of the Lease, he was required to pay "*a fair and reasonable percentage*" towards the costs of the same.

22. The "*Building*" was defined in the Lease as "*the building known as Jupiter (Phase 3) erected within the Development and in which the Demised Premise is situated*". As such, the term encompassed the five sections referred to above - Europa 1, Europa 2, Placido, Galilean and Calisto – as well as 54 and 54b Sherborne Street and the Property.

23. "*Material Charges*" was defined in the Lease as:

> "*the aggregate of the charges computed in accordance with the Sixth Schedule and payable under clause 3(4)*"

[The reference to clause 3.4 appeared to be in error as (as mentioned above) the covenant was contained in clause 4.4.]

24. The Sixth Schedule to the Lease confirmed that the Material Charges included, firstly, the estimated expenditure for those items detailed in the Seventh Schedule, secondly, an appropriate amount towards a reserve fund and, thirdly, a "*reasonable sum*" to "*employ managing agents for its administrative and management obligations in respect of the Development*."

25. The Seventh Schedule to the Lease detailed the purposes for which the Material Charges were to be applied, which included, amongst other things, the employment of staff, keeping the Building insured, the maintenance of the lifts and the provision of such other services for the benefit of the lessees.

The Hearing

26. Following the inspection, a hearing was held via CVP on 30 September 2021. The Applicant attended and was represented by Mr Winarskie. Mr Craggs represented the Respondent, accompanied by Mr Mansell and Ms Cannon-Leach.

Submissions

The Management Fees

27. Mr Winarskie, on behalf of the Applicant, clarified at the hearing that the sum in dispute was the £38,740.00 detailed in the 2020 Budget as "*Management Fees*". The Applicant accepted that the Lease provided for the payment of management fees, however, disputed the amount payable, believing it to be excessive taking into account the age, character and the number of residents residing in the Development.

28. The Applicant submitted that, considering the Development consisted of 250 apartments, the management was not that onerous. The Applicant also submitted that, as the invoice for the managing agent's fees simply referred to the charges as "*Management fees*", it was not possible to provide any alternative quotes for the services aside from comparing the management fees from previous years with a reasonable increase. The Applicant also queried whether the Respondent had made any effort to obtain a cheaper quote and queried the basis upon which the management fees were apportioned.

29. Finally, the Applicant referred to the fact that, in addition to management fees, there was also an item in the budget which referred to "*Staff Costs*" for a sum of £113,003.00. He confirmed that the Estates Manager was employed, who was on site 12 hours a day, five days a week. As such, the Applicant contended that there would be some crossover between the work carried out by the Estates Manager and that which was carried out by the managing agent.

30. Mr Craggs, on behalf of the Respondent, submitted that the managing agent's fees were not excessive and pointed to the fact that the Applicant had failed to provide any alternative quotes to indicate otherwise.

31. Ms Cannon-Leach confirmed that the Material Charge Percentage for the maintenance of the Development was calculated based on the square footage of each unit. She confirmed that the apportionment for the Property amounted to 0.776, based on the size of the apartment. She also stated that, as far as she was aware, the same apportionments had been used by the former managing agents since the commencement of the Lease.

32. Ms Cannon-Leach stated that the management fees for the Development were based on a charge of £154.96 per unit, amounting to £38,740.00 for 250 units. She stated that the cost to each individual unit was then calculated based on that unit's Maintenance Charge Percentage.

33. In relation to the different items detailed in the 2020 Budget, she confirmed that the "*Management Fees*" referred to the fees charged by the managing agent and that the item referred to as "*Staff Costs*" referred to the salary of the Estates Manager together with the additional security costs.

34. In relation to any possible crossover in the roles, Mr Mansell stated that the roles were completely different. He confirmed that the managing agent dealt with the administration of the Development, credit control, management of service charges and liaising with the Respondent, whereas the Estates manager acted as a caretaker on the site to liaise with residents and dealing with items such as allowing access for contractors.

The Buildings Insurance

35. Mr Winarskie confirmed that the Applicant accepted that there would be some form of increase in the buildings insurance post 'Grenfell', however, stated that the increase was also due to issues relating to the construction of the buildings, which were discovered in the survey from Quantum Compliance dated 4 December 2019. Accordingly, he submitted that the lessees should not have to pay the whole of the increase and that the Respondent should have raised this matter with the freeholder to seek a contribution towards the costs.

36. In addition, he queried whether the Respondent had obtained alternative competitive quotes and whether there was a failure to consult under section 20 of the Act.

37. Mr Craggs confirmed that the lessees were responsible to pay for the buildings insurance under the terms of the Lease and that there was no responsibility for the Respondent or the freeholder to pay the same, even if issues in respect of the defects in the building had been discovered.

38. Mr Mansell accepted that the buildings insurance premium had increased due to the 'Grenfell effect' and other issues discovered in the survey from Quantum Compliance. He confirmed that they were making an application to the Building Safety Fund in respect of the cladding issues.

39. Mr Mansell, confirmed that the premium had risen from £59,820.77 (1 August 2018 to 31 July 2019) to £77,026.36 (1 August 2019 to 31 July 2020). He did, however, point to the fact that the latest premium £65,473.33 (1 August 2020 to 30 June 2021), had decreased. He believed that this may have been due to Pennycuick Collins setting out an action plan for the Development, and hoped that it would decrease further once works were carried out.

40. Mr Mansell stated that, as Savills had instructed insurance brokers, they would have gone to market and obtained what they considered to be the best quote. He confirmed that, as the premium in question was obtained by Savills, he was unable to supply any other competitive quotes that might have been obtained or obtain a copy of the claims history.

41. Ms Cannon-Leach confirmed that none of the buildings insurance policies were for a term in excess of twelve months and, therefore, were not qualifying long term agreements ('QLTAs').

The Additional Security

42. Mr Winarskie submitted that the provision for additional security was unnecessary and that the service was not to a reasonable standard. In addition, he queried whether there was a failure to consult under section 20 of the Act.

43. In relation to the need for security, Mr Winarskie pointed to the fact that the new Fire Risk Assessment Report dated 29 September 2020, commissioned by Pennycuick Collins from BB7, confirmed that it was no longer considered necessary for a Waking Watch to be provided. In addition, he confirmed that the Development had the benefit of an Estates Manager and CCTV which operated 24 hours a day.

44. Mr Winarskie noted that the invoices provided by Impact Services Northern Ltd ('Impact'), did not include the schedules referred to on the said invoices, and queried the absence of any written agreement with them. He submitted that, as their services had been used from July 2019 to February 2021, their instruction should have been subject to consultation. In addition, he queried whether any local firms had been approached to obtain alternative quotes.

45. The Applicant stated that the additional security was non-existent. He stated that he had, on occasion, found people sleeping outside his Property, which he submitted evidenced that the service was not to a reasonable standard. He did, however, confirm that he had never called the 24-hour security contact number to report any incidents.

46. Mr Craggs submitted that there was clear evidence that problems were present at the site and that additional security was required as far back as 2018, as referred to in the minutes of the EGM dated 11 December 2018. The minutes confirmed that night patrols, twice a night, had been put in place since July 2018 at a cost of £15 per patrol. In addition, Mr Craggs stated that issues with security were discussed again in the minutes to the EGM dated 17 July 2019, due to problems caused by the homeless.

47. Mr Mansell confirmed that Impact had been chosen by Savills to carry out the additional security services and that he was unsure as to whether any alternative quotes had been obtained. He understood that Savills had instructed the services of Impact on other sites they managed.

48. Mr Mansell stated that the service was clearly required, as detailed in the minutes, and that, in addition to the security, lights in the stairwells had been changed in 2019 to fend off use of the stairwells by trespassers for taking drugs, which further evidenced the need for security.

49. He stated that, although there was CCTV in place at the Development, it was not remotely monitored 24 hours a day and that the additional security was only in place when the Estates Manager was not on site.

50. In relation to the Waking Watch, Mr Mansell confirmed that this was put in place following the findings relating to the cladding in the Quantum Compliance survey. He stated it would have been unreasonable for the Respondent not to have started such a service having received that report. Mr Mansell stated that, in addition to the Waking Watch service, residents were given a telephone number which could be used throughout the day to report any security issues.

51. Mr Mansell confirmed that the Waking Watch was stopped in February 2021, following the outcome of the new fire risk assessment carried out by BB7.

52. Mr Craggs submitted that a section 20 consultation was not required as the agreement with Impact was an oral agreement. He stated that as there was no written agreement, there was no minimum term and that either party could give two weeks-notice to end the service. He submitted that, in order for the service to qualify as a QLTA, there would need to be a minimum term exceeding twelve months.

53. Following the hearing, Mr Mansell provided a copy of correspondence between him and Frank Jackson, the Operations Director at Impact. The emails confirmed that Impact had carried out security services from 19 August 2019 until 7 February 2021, when Pennycuick Collins terminated the service. They confirmed the charge rate for the service was £14.67 per hour plus VAT and that they simply required a two-week notice period to terminate their services.

The Maintenance of the Lift

54. In relation to the maintenance of the lifts, Mr Winarskie confirmed that the Applicant accepted that he should contribute towards the maintenance but submitted that such contribution should be reasonable and proportionate based on the fact that the Applicant did not require use of the same.

55. The Applicant confirmed that he had a fob for the communal entrance to 53 Sherborne Street and that he could access the lift if he wanted to but that any cost he paid towards the same should be nominal, as he did not require its use to access the Property.

56. The Applicant believed that he had only visited the Property once prior to purchasing it and noted that it did have a separate entrance, however, could not remember whether he had mentioned this to his conveyancing solicitor.

57. Mr Craggs submitted that the Applicant had signed the Lease and, as such, knew he was responsible to pay towards the costs for maintaining the lifts. He referred to this being comparable to the Applicant having a parking space and, although choosing not to use it, would still be responsible for its upkeep. In addition, he stated that the Applicant had the benefit of the lift, even if he chose not to use the same.

58. Mr Craggs stated that the Applicant's share of the costs towards the maintenance of the lifts appeared to be approximately £80.00, which he submitted was a nominal figure.

59. Mr Mansell confirmed that the lift in 53 Sherborne Street, gave access to the lower basement of the car park and that he believed that the Applicant's parking space was located in the same.

The Applications for Costs

60. Mr Winarskie, on behalf of the Applicant, sought an order from the Tribunal to limit the Respondent's costs associated with the application pursuant to section 20c of the Act and also to limit any administration charges pursuant to paragraph 5A of Schedule 11 of the 2002 Act.

61. The Applicant confirmed that he had purchased the Property on 8 August 2019. He stated that one of the reasons he had purchased the Property was due to the service charge being £1,750.00. He stated that many of the flats he had viewed in Birmingham had service charges of around £3,000.00/£4,000.00 a year and that he could not afford the same. He stated that he was informed by his conveyancing solicitor that service charges did not usually increase beyond 5% a year and, therefore, he was completely taken aback when the service charge increased to £3,809.00 in 2020.

62. The Applicant was unsure as to whether his conveyancing solicitor had ever obtained a conveyancing pack from the Respondent prior to his purchase or whether such pack, if obtained, had detailed any additional service costs that might need to be included in the 2020 Budget.

63. He stated that upon receipt of the 2020 service charge demand, he thought that there had been a mistake and contacted Mr Mansell, who assured him that he would investigate the matter. He stated that, despite him telephoning Mr Mansell several times to chase up a response, he did not hear further until he received an email from him in August 2020. He stated that the email informed him that there had not been an error but that no explanation was given as to why the service charge had increased so much, other than stating that salaries had increased by 97.9% due to the introduction of the night and weekend security and that the buildings insurance had also increased by 34.5%.

64. The Applicant stated that he had not paid any of the service charge for 2020 as he was under the mistaken belief that if he did pay any part of the service charge this could be considered as his acceptance of the charges being reasonable.

65. Mr Winarskie submitted that, as there had been a six-month delay in the Applicant receiving any information from Pennycuick Collins, the fact that no leaseholders' meetings were held in 2020 and due to the delays in producing the accounts, the Applicant felt he had no alternative but to make an application to the Tribunal. In the circumstances, Mr Winarskie submitted that it would not be just and equitable for the Applicant to be charged for any of the costs relating to the application, as the Applicant felt that he had no alternative, and submitted that the costs of the application should be reduced to nothing.

66. In relation to the Respondent's application under Rule 13, Mr Winarskie stated that the Applicant had made several attempts to resolve the matter with Pennycuick Collins to reduce the chance of litigation. He stated that the application was not frivolous or vexatious and that, based on the huge rise in the service charge, the Applicant had legitimate concerns regarding the reasonableness and payability of the same. Mr Winarskie also submitted that the Respondent had greater financial resources available to them than the Applicant, who was struggling to pay the service charge.

67. Mr Mansell confirmed that he had spoken to the Applicant and accepted that the service charge had increased substantially from £2,624.95 in 2019 (£1,750.00 for the maintenance of the Development and £874.95 for the maintenance of the parking space) to £3,809 in 2020.

68. Mr Mansell stated that he was not always available to deal with queries by telephone but that he had written to all leaseholders in February 2020 and, specifically, emailed the Applicant in August 2020, giving further details of the increase. He confirmed that they had been unable to hold any meetings with the leaseholders due to the pandemic.

69. Mr Craggs, on behalf of the Respondent, confirmed that the Respondent had a contractual right to costs under the Lease and that it would not be reasonable, just or equitable that any of the other leaseholders should have to pay the costs of the application, as the services were clearly payable under the Lease and the Applicant had failed to show that the costs were not reasonable.

70. Although Ms Cannon-Leach confirmed that prior to the grant of the residential lease to the Applicant the unit was proposed to be a commercial property and, consequently, the services charged at that time might have been different, Mr Craggs confirmed that the services that had been charged to the Applicant were clearly payable under the Lease, which the Applicant had signed.

71. In relation to the Respondent's application for costs under Rule 13, Mr Craggs stated that the Applicant had no reasonable grounds to bring the application and had provided no evidence to show that any of the costs were unreasonable or not payable under the Lease. He had also failed to show that any of the services were not carried out to a reasonable standard.

72. Mr Craggs submitted that many of the issues raised by the Applicant were of his own making, as he had not shown much care or diligence when entering into the Lease. Accordingly, he submitted that the application was inherently unreasonable and that the Respondent should be awarded costs.

The Tribunal's Determinations

73. The Tribunal considered all of the written and oral evidence submitted, which is briefly summarised above. The Tribunal noted that the service charges demanded were estimated service charges and, accordingly, the Tribunal needed to determine, under section 19(2) of the Act, whether the estimated costs requested by the Respondent for the services queried by the Applicant exceeded a figure which would reasonably be payable under the provisions of the Lease.

The Management Fees

74. Based on the information regarding the roles of the Estates Manager and the managing agent, the Tribunal accepted the Respondent's submissions that there was no crossover between the two.

75. In addition, based on its inspection of the Development and noting its unusual layout and the fact that it encompassed five different sections of buildings with different designs, the Tribunal did not accept the Applicant's submission that based on its age, character and the number of residents, that the management of the same would somehow be easier.

76. The Tribunal also noted that, despite the Directions clearly requesting copies of any alternative quotes, the Applicant had failed to provide any quotes to substantiate his claim that the costs were unreasonable. The Applicant had referred to comparing the management fees for previous years; however, none were provided. The Tribunal noted that both the costs for the management fees detailed in the 2020 Budget, produced by Savills and the costs of the management fees detailed in the 2021 Budget produced by Pennycuick Collins amounted to£38,740.00. The Tribunal considered such estimated fees to be reasonable for the management of the Development.

77. In addition, the Tribunal noted that the Material Charge Percentage was based on the size of each unit and the Tribunal also considered this to be "*fair and reasonable*" as required by the Lease.

78. Accordingly, the Tribunal finds that the estimated costs for management fees of £38,740 in the 2020 Budget to be reasonable and that 0.776% of the same is payable by the Applicant.

The Buildings Insurance

79. The Tribunal noted that the buildings insurance was one of the services to be provided by the Respondent under the Seventh Schedule to the Lease and that the Applicant was responsible to pay for those services as they formed part of the Material Charges. As such, the Tribunal agreed with the Respondent, that there was no responsibility for either the Respondent or the freeholder to pay for the buildings insurance premium under the terms of the Lease.

80. In relation to any increase in the premium due to the cladding, the Tribunal noted that many insurance premiums in such buildings had increased in recent years following the tragedy at Grenfell. The Tribunal noted that the Applicant had not provided any alternative quotes which might have corroborated that the increase was excessive.

81. The Tribunal noted that Savills had instructed an insurance broker and that there was no evidence to suggest that the quote obtained was not reasonable. In addition, the Tribunal noted that the buildings insurance policy taken out in August 2019 would have come to an end in July 2020, as such the 2020 Budget would have needed to include an estimate for the remaining part of the term. As there had been an increase in the premium from the policy taken out in August 2018 to that taken out in August 2019, the Tribunal considered that it would have been reasonable for Savills to have considered that a similar rise in the premium in August 2020.

82. As such, the Tribunal is satisfied that the budgeted figure of £72,412.00 for the Buildings Insurance (in respect of the Building and Development) in the 2020 Budget is reasonable and that 0.776% of the same is payable by the Applicant.

83. The Tribunal noted that neither the insurance policy for the period 1 August 2019 to 31 July 2020 or the policy for the period 1 August 2020 to 30 June 2021, exceeded a term of more than twelve months and, consequently, neither were QLTAs.

The Additional Security

84. The Tribunal was satisfied that the agreement with Impact was an oral agreement which could be ended by two weeks' notice. As there was no written agreement and no minimum term, the Tribunal accepted the Respondent's submissions that it was not a QLTA as it was not "*an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months*" as defined under section 20ZA (2) of the Act.

85. In relation to the need for the additional security, the Tribunal noted that the minutes of the meetings held in December 2018 and July 2019 referred to issues regarding security. In addition, the Quantum Compliance survey carried out in 2019 had supported that a Waking Watch was put into place "*as soon as possible*". The Tribunal noted that the Seventh Schedule to the Lease allowed the Respondent to employ such staff and provide such services as the Respondent considered necessary to maintain the Development to a good class residential standard.

86. In relation to the costs of the service, the Applicant had not provided any alternative quotes. The Waking Watch was only provided for the hours the Estates Manager was not on site and the email from the Operations Director of Impact confirmed that the charge rate for the service was £14.67 per hour plus VAT. The Tribunal noted that the Ministry of Housing, Communities and Local Government had published data on Waking Watch costs, which indicated that the costs in 2020 ranged from £12.00 per hour to £30.00 per hour.

87. Accordingly, the Tribunal finds that the figure referred to as "Staff Costs" of £113,003.00 in the 2020 Budget (which includes the costs of the employment of the Estates Manager and the additional security) to be a reasonable estimate and that 0.776% of the same is payable by the Applicant.

88. In relation to the standard of service, although this is a matter to be considered once the relevant costs have been incurred, therefore, after the accounts have been finalised, the Tribunal did not believe that the Applicant's evidence in this regard would have been sufficient to show that the service was not to a reasonable standard. The Tribunal also noted that the Applicant had failed to contact the 24-hour security service on the telephone number that had been provided to him to inform them of any problems he was encountering.

The Maintenance of the Lift

89. In relation to the payment of costs for the maintenance of the lifts, the Tribunal noted that this was one of the services detailed in the Seventh Schedule which the Respondent was required to provide and for which the Applicant was responsible to pay a fair and reasonable percentage of the Material Charges for.

90. As previously stated, the Tribunal considered that calculating the material charges percentage based on the size of each unit was fair and reasonable. In addition, the Tribunal noted that the Lease referred to the Applicant having to pay a fair and reasonable percentage of the Material Charges. The Material Charges under the Lease was defined as "*the aggregate of the charges computed in accordance with the Sixth Schedule and payable under clause 3(4)*" and the estimated expenditure for the services detailed in the Seventh Schedule was one of those charges detailed in clause 3(4) of the Sixth Schedule.

91. Accordingly, the Tribunal considered that, although the Lease required the Material Charges Percentage to be fair and reasonable, once this had been calculated it applied to all of those items detailed in clause 3(4) of the Sixth Schedule. It did not require the Respondent to charge differing percentages depending on each of the services referred to in the Seventh Schedule. The Tribunal considered that such an interpretation would not only be a distortion of the wording in the Lease, but that calculating the costs in this way would be completely impractical and impossible to manage. In relation to the lifts, it could lead to lessees arguing that their costs should be based on usage, with lessees of apartments on the first floor wanting to pay less than costs for those lessees of apartments on higher floors.

92. The Applicant had entered into the Lease and should have been aware that he was required to pay for the costs of the maintenance of the lifts under clause 10 of the Seventh Schedule. In addition, he should have been aware that the proportion he was required to pay towards the same was the Material Charges Percentage, whether or not he obtained any benefit from the services.

93. Accordingly, the Tribunal finds that the lessee is liable to pay the Material Charges Percentage of 0.776% of the budgeted costs for the maintenance of the lifts.

The Applications for Costs

Application for an Order under Rule 13

94. The Tribunal noted that the Applicant had made the application to the Tribunal due to the substantial increase in his service charges from those budgeted for in 2019 to those budgeted for in 2020.

95. The Tribunal accepts that the Applicant had legitimate concerns regarding the increase and that he had tried to contact Pennycuick Collins on several occasions to try and understand the reasons for the increase. There appears to be no dispute between the parties that, other than a general letter sent to leaseholders in February 2020 and the email sent to the Applicant in August 2020, no other information was imparted to the Applicant in this regard.

96. The Tribunal also noted that the Respondent did not hold any meetings with the leaseholders in 2020, even virtually, due to the pandemic. As the Applicant had only purchased the Property in August 2019, he had not been in a position to attend either of the meetings in December 2018 or July 2019 and, therefore, may have been unaware of the previous concerns regarding the security at the Development. In addition, the survey by Quantum Compliance was only produced a few months after he had purchased the Property.

97. The Tribunal accepts that the Applicant's concerns in relation to the increase in the service charge were legitimate and that he believed that he had no alternative but to make an application to the Tribunal. Accordingly, the Tribunal does not consider his decision to make the application to have been unreasonable, frivolous or vexatious and does not consider that any order for costs under Rule 13 is appropriate.

Application under Section 20C

98. In relation to the Applicant's application under section 20C of the Act, in making such an order, the Tribunal must consider what is 'just and equitable' in the circumstances of the case, taking into account matters such as the conduct and circumstances of the parties and the outcome of the proceedings.

99. The Tribunal also notes the comments of Martin Rodger QC (Deputy President) in the Upper Tribunal decision in *Conway and others v Jam Factory Freehold Limited* [2013] UKUT 592 (LC), in which he referred back to the decision of Judge Rich QC in *Schilling v Canary Riverside Property Limited* LRX/65/2005 and his reflection upon his earlier decision in *The Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000 ('*Doren*'). At paragraph 54, Martin Rodger QC stated:

> "*In Schilling v Canary Riverside Development PTE Limited LRX/26/2005 Judge Rich QC reiterated that the only guidance as to the exercise of the statutory discretion which can be given is to apply the statutory test of what is just and equitable in the circumstances. The observations he had made in his earlier decision were intended to be "illustrative, rather than exhaustive" of the matters which needed to be considered. He added at paragraph 13 that:*
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> > *"The ratio of the decision [in Doren] is "there is no automatic expectation of an Order under s.20C in favour of a successful*

tenant." So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour.""

100. Looking at the circumstances leading to the application and the conduct of the parties, the Tribunal was conscious of the fact that the application was made by the Applicant due to his concerns in the increase in his service charge. From his evidence, his concerns were heightened as he was under the mistaken impression that the service charges would only increase by around 5% each year. This did not appear to be based on any of the provisions under the terms of the Lease but rather from information he stated that he had received from his conveyancing solicitor.

101. The Applicant had made some attempt to obtain further information from Pennycuick Collins but did not appear to have chased them following their email of August 2020, nor did he appear to have made any investigations as to whether the budgeted costs were unreasonable by obtaining alternative quotes, either before or after making the application.

102. The Tribunal did not consider that the circumstances of the parties in this case were particularly unusual and noted that the Applicant had not succeeded in showing that any of the estimated costs he had queried had been unreasonable. As such, the Tribunal considered that it would be unjust for the Applicant to be protected from costs at the potential expense of the remaining lessees.

103. Taking into account all of the circumstances of the case and the submissions made, the Tribunal does not consider that it would be just and equitable to make any order in favour of the Applicant under section 20C of the Act. That being said, this is not decision as to whether the Lease allows the Respondent to recover his costs as part of the service charge, in fact, considering the provisions of the Lease, it is unclear that they can.

Application under Paragraph 5A

104. In relation to the application under paragraph 5A of Schedule 11 to the 2002 Act, the Tribunal considered that the items that were relevant in relation to the application to section 20C of the Act were also relevant in relation to the application under paragraph 5A. This approach was recently endorsed by Judge Elizabeth Cooke, in the Upper Tribunal, in *Ramjotton v Patel* [2021] UKUT 19 (LC). In a paragraph 5A application, however, the Tribunal is considering the Applicant's liability to pay administration charges in respect of litigation costs.

105. There is nothing to suggest that the Respondent's litigation costs had been demanded by the time of the hearing and the application appeared to have been made in anticipation of the same. The Tribunal noted that in June 2021 the litigation costs were detailed as £7,134.60 (in the N260 Form included within the bundle) and the Tribunal would not expect these to have increased much further following the hearing.

106. In relation to whether an order should be made, the Tribunal noted that the Applicant had failed to show that any of the budgeted service charge costs were unreasonable. He had also failed to pay any of the service charge though, presumably, he accepted that an amount of £1,750.00 was reasonable, having paid such an amount in 2019.

107. The Tribunal also noted, however, that the Applicant had contacted Pennycuick Collins to query the increase in the service charge. The response in their email, received some six months later, did not alleviate the Applicant's concerns and no meetings were held with the leaseholders in 2020, in which the Applicant could have tried to obtain further clarification of the matters concerning him. The Applicant did not appear to have pursued the matter further with Pennycuick Collins, instead considering his next step should be an application to the Tribunal

108. Taking into account all of the circumstances of the case and the submissions made, the Tribunal considers it just and equitable to make an order that the Applicant is only liable to pay 75% of any reasonable administration charges in respect of litigation costs arising from this application.

109. Again, this is not a decision as to whether the Lease permits the Respondent to recover any litigation costs, nor as to whether any costs when demanded are, in fact, reasonable.

Appeal Provisions

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

M. K. GANDHAM

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Judge M. K. Gandham