



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

<b>Case Reference</b>	:	CHI/00HB/LSC/2022/0051
<b>Property</b>	:	Huller & Cheese, Redcliff Backs, Bristol, BS1 6WJ
<b>Applicants</b>	:	(1) Michael Thompson (Flat 22) (2) Mungo Conner (Flat 25) (3) Laura Tinner and Iain Brook (Flat 27) (4) James Rooney (Flat 29) (5) Gabriel McLoughlin (Flat 31) (6) James Woodward (Flat 48)
<b>Representative</b>	:	Jury O'Shea LLP (solicitors)
<b>Respondent</b>	:	(1) Huller and Cheese Residents Company Limited; and (2) Generator (Huller House) LLP
<b>Representative</b>	:	Birketts LLP (solicitors)
<b>Type of Application</b>	:	Section 27A Landlord and Tenant Act 1985 (service charges), s.20C Landlord and Tenant Act 1985 and para 5 of Sch.11 to the Commonhold and Leasehold Reform Act 2002
<b>Tribunal Members</b>	:	Judge Mark Loveday Michael Ayres FRICS
<b>Date and venue of hearing</b>	:	10 October 2022 (Decision without a hearing under Rule 31)
<b>Date of Decision</b>	:	21 December 2022

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**DETERMINATION**

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## Introduction

1. This is an application for determination of liability to pay service charges under s.27A Landlord and Tenant Act 1985 (“the 1985 Act”).
2. The matter relates to a riverside development at Huller & Cheese, Redcliff Backs, Bristol, BS1 6WJ. The Applicants are the lessees of six flats and the Second Respondent is the freeholder. The First Respondent is the third-party Management Company named in the leases. There is also an application for an order under s.20C of the 1985 Act in favour of the lessees of 38 flats listed in the Application, together with a similar application under para 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002 (“the 2022 Act”).
3. The application dated 9 May 2022 seeks a determination in respect of the relevant costs of managing agents incurred during the 2017-22 service charge years. The costs of £120,096 were incurred in the employment of the managing agents JPW Property Management Ltd (“JPW”) as follows:
  - (a) 2017: £10,800 (6mo)
  - (b) 2018: £21,600
  - (c) 2019: £21,600
  - (d) 2020: £22,032
  - (e) 2021: £22,032
  - (f) 2022: £20,032 (estimated)

These figures are supported by entries in the annual service charge accounts.

4. The questions which arise are:
  - (a) whether the management costs for 2017-2021 were “reasonably incurred” under s.19(1)(a) of the 1985 Act;
  - (b) whether the element of the 2022 interim service charges relating to the management costs was “reasonable” under s.19(2) of the 1985 Act; and
  - (c) whether the management services provided were of a reasonable standard under s.19(1)(b) of the 1985 Act.
5. Directions were given on 12 July 2022. The Regional Surveyor found the case was suitable for paper determination and directed that the Tribunal would make a decision without a hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The parties are both represented by experienced solicitors and did not object to this course of action.

## The facts

6. The background facts appear in the parties’ Statement of Case and are not in dispute. Huller & Cheese is a residential development in Central Bristol comprising 51 flats over six floors. It was completed c.2016 as a warehouse conversion involving the adjacent Huller House and the Cheese Factory. The Second Respondent was the developer of the block. From that time, the Second Respondent began to grant leases of the flats within the development. The leases were in tripartite form, with the First Respondent (a company limited by guarantee) named as management company. The Applicants understand that on completion of the sale of the last flat in the block, ownership of the First Respondent will pass to the majority of the leaseholders in the block who will

then have control over the management of the building. One of the penthouse flats remain unsold, and so ownership of the First Respondent and control over the management of the building has not passed to the leasehold owners and remains with the Respondents.

7. Since the outset, the First Respondent has engaged JPW to manage the Property and administer the service charge. The Respondents' Statement of Case includes a copy of the most recent management agreement between the First Respondent and JPW dated 1 July 2022.

## **The Leases**

8. The bundle includes a copy of a lease of Plot 31 Huller & Cheese Warehouse dated 22 May 2017, which is said to be typical of the rest. As already explained, the lease is in tripartite form, with service charges being payable to the First Respondent, and the First Respondent undertaking the bulk of the management responsibilities. Para 6 of Sch.4 provided as follows:

“6. [The First Respondent] shall be entitled to employ and engage or to delegate any of its obligations and or powers to such Managing Agents servants agents managers contractors solicitors surveyors and accountants as it considers necessary or desirable from time to time for the performance of its obligations under this Schedule or for the exercise of any of its powers contained in the leases of the Flats and shall pay and discharge all such wages commissions fees and charges as shall be thereby incurred”.

It follows that the role of the Managing Agent is limited to (i) the performance of its obligations under Sch.4 to the Lease, and (ii) the exercise of any of its powers contained in the leases of the Flats. The full terms of Sch.4 of the Lease are attached in **Appendix A** to this decision.

## **The Law**

9. Section 19 provides as follows:

**“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.”

10. As to s.19(1)(a), the leading case is the Court of Appeal decision in **LB Hounslow v Waaler** [2017] EWCA Civ 45. The question whether costs have been reasonably incurred involves a two-stage test that examines (i) the ra-

tionality of the decision-making process, and (ii) whether the outcome is reasonable. This approach was considered and adopted by the Upper Tribunal (Lands Chamber) in relation to insurance costs in *Cos Services Ltd v Nicholson* [2017] UKUT 382 (LC); [2018] L. & T.R. 5. In *Cos Services*, the Upper Tribunal expressly endorsed the approach of the Court of Appeal in *Waalder* and proceeded to explain the approach to be adopted in relation to the second limb of *Waalder*:

48. Context is, as always, everything, and every decision will be based upon its own facts. It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they “compare like with like”), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease.

Apart from explaining *Waalder*, the case is also material to the approach to be adopted in this case. In *Cos Services*, the lessees called evidence from an insurance broker<sup>1</sup> who produced quotes from other insurers for similar policies of insurance to the policy taken out by the landlord. The premiums for these policies were apparently in the region of one quarter of the premium charged by the landlord to the premises. The landlord did not call any evidence from a broker to explain this discrepancy. The Tribunal concluded:

“67. It remains a mystery, having heard the evidence adduced by both parties, why there is such a discrepancy between the premiums charged to tenants under the landlord’s block policy and the premiums obtainable from other insurers on the open market. It a mystery which the landlord has been wholly unable to explain.

68. It is clear to the Tribunal that the insurance premiums being charged by the landlord to the tenants were excessive, in the sense that considerably lower premiums for similar protection could have been obtained elsewhere. Moreover, insofar as there may have been certain advantages with the NIG policy, they were so insubstantial that they could not justify the amount being charged.

69. It follows, applying the reasoning set out above, that the landlord has failed to satisfy the Tribunal that the amounts sought to be charged to the tenants were “reasonably incurred”. The Tribunal therefore reaches the same decision as the FTT, and the landlord’s appeal from that decision must be dismissed.”

The Tribunal returns to this approach to s.19(1)(a) assessments below.

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<sup>1</sup> Albeit one that was not held out as an independent expert.

11. As far as the other statutory provisions are concerned:
  - (a) s.19(1)(b) of the Act requires no further explanation.
  - (b) Strictly speaking, the tests of ‘reasonableness’ in ss.19(2) and 19(1)(a) are not the same. But it would be artificial to approach the estimated 2022 management charges in a different way to the actual management charges incurred in earlier years.

## **The issues**

12. The Applicants’ complaints are twofold. First, they consider that from the outset JPW provided management services which were not of a reasonable standard and which fell below the standards expected by the RICS under the Residential Service Charge Management Code (3<sup>rd</sup> Ed). Secondly, JPW was “London based”, and the fees it charged were excessive for a property outside London. The second issue raises important questions with wider application, namely the reasonable level of managing agents’ fees for properties in Central Bristol, and it is therefore more convenient to deal with this issue first.

## **Were the management fees excessive?**

### *The Applicants’ case*

13. Mr Gabriel McLaughlin is the owner of apartment 31 at Huller and Cheese, and one of the Applicants. Mr McLaughlin is a chartered surveyor specialising in asset and property management rather than residential service charges. Like the broker in *Cos Services*, he is not to be treated as an independent expert and does not put himself forward as an expert. Nevertheless, Mr McLaughlin sought comparative fee proposals from 4 local Bristol firms of managing agents that were attached to the Applicants’ Statement of Case:
  - (a) An email from BNS Management Services dated 9 May 2022. BNS is an ARMA member operating from an address in Downend, Bristol, whose Operating Director was a Member of the Institute of Residential Property Management (an examined qualification). The email provided “a steer on our management fees for a building of your size and location” which were “in the region of £190 + VAT per flat (£9,500pa)”. There would additionally be a “service charge accounts preparation fee” of £450 + VAT and “the H&S service would be £585 + VAT”. The email attached a summary of services, although it was stated that service levels would be agreed later on. According to the summary, the basic fee included the ordinary processes of accountancy, communication, management and compliance as well as company administration.
  - (b) An email from Hillcrest Estate Management Ltd dated 27 April 2022. Hillcrest was a member of ARMA and its Managing Director was also a member of the IRPM. The firm was based close to the premises at Whiteladies Road. Hillcrest managed about 190 properties in Bristol and Bath, including the Buchanan’s Wharf development next to the property and it prided itself as having “the most experienced team in Bristol”. Hillcrest’s fees would be “between £200.00 to £250.00 plus VAT per unit per annum” based on 50 units, to include “full estate management, bookkeeping, company secretarial and insurance duties”.

There was an extra charge of £300pa for an 'out of hours' emergency call out service. Hillcrest's email also included a summary of services.

- (c) A fee proposal from 3Sixty Real Estate dated 13 May 2022. Then firm was RICS regulated, and again had offices at Whiteladies Road close to the premises. The fee proposal (which listed financial management and general management services) included an initial set up fee of £450 plus VAT and an ongoing management fee of £10,000 + VAT subject to a 3-year contact and annual uplifts in line with RPI.
  - (d) An email from HML Group dated 6 December 2022. This proposed a management fee of £185 + VAT per unit (£11,100) with an additional fee for company secretarial (£410 + VAT) and an out of hours service of £10 + VAT per unit (£600). HML's brochure explained that it managed a "vast portfolio across the UK" from a network of over 20 offices, including Bristol.
14. Mr McLaughlin's basic point was that these showed the charges from local management agencies were considerably lower than JPW's fees. When linked with the fact that these agents are local to the block (and therefore are on hand and able to attend at short notice and have connections with local contractors), this made their appointment far preferable to that of JPW. Indeed, the proposed charges from the local agents were in the region of 50% of the management fees charged by JPW for a comparable service and with the added advantage that the agents are local to the property and therefore able to easily attend, assess and respond to maintenance issues.
15. In their Reply dated 31 August 2022, the Applicants contended that the fact JPW was based in London self-evidently meant it had higher overheads and salary costs. Save for the fact that the agents were RICS and FCA regulated, the Respondent had failed to give any reason why the management fees were 40-50% higher than the fees quoted by the four Bristol-based managing agents. Moreover, it was not correct to say three of the four firms were not RICS/FCA regulated. "HML" was a trading name of Lambert Smith Hampton, which is an appointed representative of the RICS/FCA-regulated Countrywide Principal Services Ltd, which was FCA and RICS regulated. In fact, HML was a reputable national firm with a local office in Bristol. 3Sixty Real Estate was RICS Regulated. HML, Hillcrest and BPN were members of ARMA, and all four agents were required to comply with the RICS Code. ARMA had its own consumer charter and standards, including a complaints procedure. In short, these were all highly reputable local firms.

### *The Respondent's case*

16. The Respondent's case appears in para 11 of its Statement of Case dated 24 August 2022, which is signed by solicitors. The Applicants' quotes were analysed in detail by Mr Rani Sahota in his witness statement. In summary, the Respondents' case was that:
- (a) The fact that JPW is based in London does not impact on cost. JPW managed property across the south of England, particularly along the M4 and M3 corridors, and it did not charge for travel costs for attending properties they manage.

- (b) JPW's coverage means they have contacts with local contractors and suppliers, who are utilised where appropriate. Indeed, most of the routine, 'reactive' maintenance carried out at the Building is undertaken by Beacon Maintenance Services Limited, based in Bristol.
  - (c) JPW is a RICS regulated firm, whereas only one of the alternative agents approached by the Applicants has this accreditation.
  - (d) JPW employ experienced property managers to manage the Building, which is reflected in the management fees charged.
  - (e) There were no 'hidden' charges in JPW's management fees.
  - (f) The management fee has increased only 2% over a 5-year period, significantly below the rate of inflation over the same period.
17. Mr Rani Sunak is a property management director of JPW, and his statement is dated 24 August 2022. Mr Sunak gives an address in London EC2. JPW were appointed as the managing agents of the property on 1 July 2017. Whilst JPW's head office is located in London, it has a national practice and employees based across the South and South-East. The firm is a RICS Regulated firm established in 1960 and has considerable experience in providing residential block management services throughout the United Kingdom. The firm is also authorised and regulated by the Financial Conduct Authority (the "FCA") and is one of only a limited number of firms to be regulated by both RICS and FCA. As a RICS regulated firm, the practice adheres to RICS Codes of Practice and operates a complaints handling system. The firm is committed to training its employees and remunerates them in line with the current market rates. Whilst the office is still London-based, JPW offered a flexible working policy, meaning that its employees were based much wider than this, making callouts to properties that are managed much more accessible. JPW's employees made quarterly inspections at each property under management and attended more frequently when issues arose or attendance was required for specific meetings.
18. Mr Graham Blackford is a director of companies within the Second Respondent's Group, and his statement is dated 23 August 2022. He explained the process by which JPW was selected, although the dates are not given. The agents were recommended by a fellow director along with others, and Mr Blackford subsequently met with 3 firms. JPW was the standout candidate, and he was immediately given the impression they knew what they were doing and could be trusted to manage a development of this type. The fact that JPW was primarily based in London did not deter him from instructing them. They already managed various buildings outside London and towards the southwest of England (and continue to do so), and they instruct local suppliers where possible. In recent years, JPW's location has become even less significant with the rise in home-working. It is easy for them to remotely respond to management issues at the Property, particularly with the use of local suppliers.
19. The management fees charged over the relevant period were calculated as follows:
- (a) 1 Jan 2018-31 Dec 2018 51 units @£352+VAT = £18,000+VAT<sup>2</sup>

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<sup>2</sup> The Respondents give no specific information about the fees incurred in the initial six-month period 1 Jul 2017-31 Dec 2017. But it is clear the same rate was adopted as in 2018-2022.

(b) 1 Jan 2019-31 Dec 2019 51 units @£352+VAT = £18,000 + VAT

(c) 1 Jan 2020-31 Dec 2020 51 units@£352+VAT = £18,000+VAT<sup>3</sup>

(d) 1 Jan 2021-31 Dec 2021 51 units@£360+VAT = £18,360+VAT

(e) 1 Jan 2022-31 Dec 2022 51 units@£360+VAT = £18,360+VAT

The initial management fee had increased by 2.0% over the most recent 5-year period. In contrast, the Consumer Price Index inflation for the same initial period from 1 January 2018 to 1 June 2022, has been 16.6%.

20. JPW's management fee was fixed, and it had never raised any time-based charges. In fact, the city centre location of this particular property meant it was management intensive, and Mr Sunak listed various issues associated with managing such properties, including the level of service required and need to provide properly trained and qualified staff. Whilst there may be firms who charge lower fees than JPW, they do not necessarily provide the same level of service from experienced staff. It made no charge for travel expenses for agents to attend the Property. JPW manages properties throughout the M4 and M3 corridors including Swindon, Southampton, Dorchester and therefore can attend the Property in under 2 hours should the need arise. The current management fee represents 27% of the total annual service charge payable for the Property. The average service charge for the year ending 2022 is £1,592 per flat / unit and is based on the total service charge budget of £81,227 (including VAT), excluding insurance.

21. As to the alternative quotations, it was unclear what information was provided to the agents or the basis on which they have quoted, but I have reviewed the quotes in order to offer comparison with the fees and service charged by JPW. Only one of the agents approached (3Sixty Real Estate) is a RICS regulated firm like JPW. 3Sixty Real Estate (i.e., the only RICS regulated firm) quoted on the basis of a 3-year fixed contract, whilst JPW operates on a 12-month contract which ensures flexibility for the Respondents.

22. The services offered by JPW are set out in the management agreement annexed to the statement of case. They did not charge extra for travel, out of hours helplines, accountancy preparation etc. Each of the other companies the Applicants have approached appear to charge extra for some or all of these services, the cost of which is unknown. It is not clear what level of experience the Applicants would obtain if one of the alternative managing agents contacted by the Applicants were instructed.

### *The Tribunal's findings*

23. On this issue, many of the submissions (on both sides) compare the services provided by JPW to the services provided by the four Bristol-based management teams. The Tribunal does not consider this approach is particularly helpful to the question it has to resolve under s.19(1)(a) of the 1985 Act. In ***Cos Services***, the Upper Tribunal stressed that the relevant comparison was between the services provided by suppliers and the relevant requirements of

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<sup>3</sup> The figure for 2020 is wrong. The fees (including VAT) were £22,032: see 2020 service charge accounts.



the lease. And in this instance, the services to be provided by the managing agents broadly appear in Sch.4 to the Lease.

24. The Tribunal is satisfied that the basic fees charged by JPW for managing 51 flats as set out in management agreement of 1 July 2022, covers the services set out in Sch.4 to the Lease. It is a reasonable assumption that the previous management agreements covered similar services in previous years. The basic management costs for these services in 2022 was £18,360pa+VAT, although the agreement makes provision for additional time-based charges for other matters.
25. The Tribunal is also satisfied the alternative quotations provided by the Applicants covered the services set out in Sch.4 to the Lease. But the fees quoted by each agent for managing 50 units need to be adjusted to make a proper comparison with the Sch.4 services:
  - (a) BNS Management Services provided a short summary of services within its basic fee of £9,500pa + VAT. Broadly speaking, these covered the services in Sch.4 to the Lease. However, the additional “health and safety” service, for which BNS charged £585pa + VAT and the “service charge accounts preparation fee” of £450pa + VAT appear to fall within the First Respondent’s obligations in Sch.4 to the Lease. It follows that BNS would have charged **£10,535pa** + VAT to provide the services in Sch.4 to the Lease.
  - (b) Hillcrest Estate Management provided a more complete summary of services within its basic fee of “between £200.00 to £250.00 plus VAT per unit per annum”. According to section 3 of the Summary of Services, the basic fee included “ensuring compliance with the relevant health and safety legislation”. The upper end of the fee scale (£250 per flat) suggests a basic fee of £12,500pa + VAT in 2022. For a high-end residential scheme in central Bristol, the cost of 24-hour emergency call lines would ordinarily fall within the Sch.4 costs as well, so the Tribunal considers this ought properly to be added to Hillcrest’s basic fee. It follows that the upper end of Hillcrest’s charging range would have been **£12,800pa** + VAT to provide the services in Sch.4 to the Lease.
  - (c) 3Sixty Real Estate’s email gave fewer details of its services, but it appeared that the £10,000 + VAT basic management fee covered the Sch.4 costs. Company secretarial costs were not included in Sch.4 to the Lease, so this additional charge can be disregarded. It is true 3Sixty’s fee was based on a contract for a minimum of 3 years, although that is unlikely to have made much difference to the fees quoted. But the one-off set-up fee of £450 + VAT must be spread over that minimum 3-year period. It follows that 3Sixty Real Estate would have charged **£10,150** + VAT to provide the services in Sch.4 to the Lease.
  - (d) HML’s email attached a marketing brochure, but it was not entirely clear which services were included in the basic fee of £9,250pa + VAT. For, the same reasons given above, one can disregard company secretarial costs, but one must add the ‘out of hours’ service, for which the agents would charge an extra £600pa + VAT. It follows that HML would have charged **£9,750** + VAT to provide management services for the premises.

26. Plainly, there are differences between the services offered by each of the agents for their basic fees, In particular, the core services offered by JPW differed in minor respects from the core service offered by the others. But with the above adjustments, the Applicants' evidence gives an adjusted range of £9,750 - £12,800pa + VAT for management fees charged by locally-based agents in Bristol. These figures need to be adjusted upwards slightly, since the alternative quotes are given for managing 50 flats, whereas JPW's fees are based on managing 51 flats. Suffice it to say that the Tribunal accepts the Applicants have demonstrated that the ordinary range of fees in 2022 charged by local firms of managing agents in Bristol for managing a block of 51 flats was in the broad range of between **£10,000pa** and **£13,100pa** + VAT.
27. The Tribunal is conscious that under the second limb of **Waalder**, the Respondents do not have to choose the cheapest management fees. But there is plainly a discrepancy between the 2022 management fees charged to tenants under the Lease and the management charges quoted by other agents on the open market. It is clear to the Tribunal that the fees being charged by the Second Respondent to the tenants were excessive, in the sense that considerably lower fees would be charged by Bristol-based managing agents for providing the management services under the leases. This was the approach of the Upper Tribunal to insurance premiums in **Cos Services**, and it is an approach which this Tribunal applies to managing agents' fees.
28. The Tribunal therefore turns to the question whether the Respondents have given a proper explanation of the advantages of the services offered by JPW, which is substantial enough to justify the additional amount being charged. The Tribunal notes there is evidence Mr Blackford tested the market in around 2017, but no evidence the First Respondent has ever re-tendered the management work since then. Essentially, the comparative advantages suggested by the Respondents are fourfold, and the Tribunal deals with each in turn:
- (a) First, it is said that JPW is RICS and FCA regulated, whereas only one of the alternative agents approached by the Applicants has even RICS accreditation. The Tribunal declines to engage in a comparison between the relative advantages to leaseholders of its managing agents or their staff being regulated by the RICS, ARMA, IRPM or indeed the FCA. Each professional body is widely recognised within the property management industry and there is no evidence that the regulatory regime explains the significant difference in management fees charged by JPW. Still less is it shown that professional accreditation justifies the significant extra expense to the lessees who ultimately have to pay the bills. Quite apart from this, HML's parent firm is RICS/FCA regulated and 3Sixty Real Estate is RICS regulated. These accreditations do not seem to have elevated the fees of the two firms, which were the two lower quotations given by the Bristol managing agents.
  - (b) Secondly, it is said JPW employs experienced property managers to manage the Building, which is reflected in the management fees charged. No evidence was given to support the suggested experience of the managers, still less to show that the four alternative quotations were based on the employment of *inexperienced* property managers.

All agents purport to employ good staff, but there is simply no evidence to differentiate between the various firms on this account.

(c) It is said there are no 'hidden' charges in the management fees charged by JPW. The exercise above has attempted to provide a broad comparison between the basic charges made by each agent and to adjust for this consideration. But in any event, it may not be entirely accurate to suggest JPW has never applied time-based management charges to the service charge accounts. There is a small discrepancy between the managing agents' fees given by the Respondents in some years at para 19 above and the management charges shown in the annual accounts which appear in para 3 above. It certainly appears that additional managing agents' fees may have been charged by JPW in some years.

(d) Finally, it is said JPW's management fee has increased only 2% over the last 5 years, significantly below the rate of inflation over the same period. That may be the case, but the relevant comparison is made at 2022 fee levels alone, and the change in fees over time is not relevant to this exercise.

29. On the Respondents' evidence, it remains a mystery why there is such a discrepancy between the management fees charged to tenants and the fee quotations obtainable from Bristol-based managers on the open market. The Tribunal prefers the Applicants' case, namely that the fact JPW was based in London self-evidently meant it had higher overheads and salary costs than local agents. In the premises, the Tribunal accepts the Applicants' contention that the relevant costs of employing the managing agents were not reasonably incurred.

30. The Tribunal has already indicated the range of managing agents' fees obtainable on the open market from Bristol-based agents for providing the relevant services at the Premises in 2022. It considers the upper end of this range is appropriate, especially since the highest figure is derived from the fees charged by Hillcrest, which manages the block next door to the subject premises. The Tribunal concludes that the amount payable for managing agents' fees by the Applicants in 2022 should be limited to £13,100 + VAT (or £15,720).

31. The 2022 managing agents' fees form part of the interim service charges, and the issue for that year is whether the Applicants' service charges are reasonable under s.19(2) of the 1985 Act. In that respect, the Tribunal finds the managing fees for 2022 resulted in service charges which were "a greater amount than is reasonable". It limits the recoverable interim service charges to the relevant contribution by each Applicant to managing agents fees of £13,100 + VAT.

32. As to the 2017-2021 service charge years, none of the agents gave the management fees they would have charged in previous years. But the Tribunal notes JPW's scale charges have barely changed over the period from 1 July 2017 onwards, and there is no suggestion the prevailing level of Bristol management fees was higher at any time before 2022. The Tribunal is therefore satisfied the reasonable level of managing agents' fees did not fall below £13,100pa + VAT in any of the earlier service charge years. It may possibly have been lower, but the Tribunal can only proceed on the evidence before it.

The Tribunal therefore determines that the managing agents' fees by the Applicants through their 2017-21 service charges should also be limited to £13,100pa + VAT (or £15,720pa)<sup>4</sup>.

## **Issue 2: Was the standard of services reasonable?**

33. The central allegations about the standard of services appear in the Applicants' Statement of Case and can be summarised as follows:
- (a) Delays in providing annual service charge accounts: Statement of Case para 7.
  - (b) Lack of responsiveness by JPW, particularly relating to issues with the bike and bin stores: Statement of Case paras 8-10. In particular, there was a successful complaint against JPW to the Property Ombudsman in 2019 by Ms Tinner and Mr Iain Brooks of Flat 27.
  - (c) Problems with the main door of the block: Statement of Case para 9.11
  - (d) Birds nesting: Statement of Case paras 12.
  - (e) A redundant s.20 consultation process in connection with fire safety issues.
34. In addition to Mr McLaughlin, the Applicants relied on evidence from Ms Laura Tinner (Flat 27), Mr James Woodward (Flat 48), Mr Mungo Conner (Flat 25) and Mr Michael Thompson (Flat 22). Their statements included numerous allegations about the standard of services over the years. The Respondents relied on the evidence of Mr Sahota and Mr Blackford, as well as on the evidence of Mr Jason Schofield (a director of the Second Respondent).

### *Accounts*

35. The Applicants' case was that over the years, there were substantial delays in producing the accounts of actual expenditure and demands for balancing payments. For example, the audited accounts for 2019 and 2020 and the accompanying demands for balancing payments were only received in September 2021 and October 2021 respectively. The accounts for the year end December 2021 were still outstanding. There had also been problems reconciling the various accounts.
36. The Respondents did not dispute the dates given by the Applicants. But they referred to clause 11.2 of the Lease, which specified only that the service charge certificate must be provided 'as soon as may be practicable' following the end of a service charge year, rather than within a specific period. It was submitted that this obligation had been met, and that the Respondents and JPW had complied with the Code in this regard.
37. Mr Sahota explained that JPW took over management of the Property on a phased basis as units were sold, and therefore ran the 2018 and 2019 service charge years in tandem. This had a knock-on effect when final accounts came to be prepared for these years. The Covid-19 pandemic then had an effect on

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<sup>4</sup> Note the 2017 service charge year includes costs of £10,700 for a six-month period. Applying the above findings *pro rata* produces a limit of £6,550 + VAT (£7,860) for the second half of 2017.

the service charge years from 2020 onwards, due to staff sickness and turnover during this period, combined with challenges in recruiting. As with all available roles, JMC needed to ensure that the vacant positions were filled with the appropriate calibre of individual with suitable qualifications. He was pleased to report that he had now recruited for vacant accounting roles and had reached a position where JMC had been able to catch up with the accounting for the Property. The accounts for the service charge year ending 31 December 2021 will be signed off during 2022, and JMC was now in a position to provide future accounts within 6 months of the year end date. He also noted that s.20B notices were issued in all cases when accounts had taken more than 6 months to complete following the end of a service charge year.

38. The Tribunal notes that the RICS Residential Service Charge Management Code (3<sup>rd</sup> Ed) provides at para 7.12 that:

“Service charge accounts should be prepared, and copies made available to all contributors, within six months of the end of the financial period, or any shorter timescales required by the lease. If for some reason the accounts cannot be prepared within six months of the year end (for example, because of a change of managing agent), all parties should be informed of the reasons and any statutory notices served.”

To some extent, this requirement derives from s.20B of the 1985 Act, but it is nevertheless recommended practice to prepare annual service charge accounts within six months of the end of the service charge year.

39. In this instance, it is accepted the 2019 accounts were provided to the leaseholders 1 year and 9 months after the end of the service charge year (i.e., 15 months beyond the 6-month period referred to by the RICS Code) and the 2020 accounts were provided to the leaseholders 10 months after the end of the service charge year (i.e., 4 months beyond the 6-month period referred to by the RICS). The delay in the 2019 accounts could have been explained by the Covid-19 pandemic, although service charge accounting is an office or home-working-based activity which was not obviously affected by the pandemic in the same way as other management functions. But by 2020, the pattern of late accounting seems to have become established, and the pandemic lockdowns of 2021 were less of an excuse for this. JMC’s explanation is effectively that by 2021 it was suffering from staff shortages. But that is an explanation and an admission, rather than an excuse. The fact the agent can explain why services are not of a reasonable standard does not in itself make the standard of those services reasonable. The Tribunal therefore finds the accounting services in the 2020 service charge year were not of a reasonable standard.

40. What sum should be allowed under s.20(1)(b)? The level of managing agents’ fees for 2020 is set out above, but that fee plainly includes numerous services not relating to accounting processes. A better indicator of the costs associated with annual accounting is probably the accountancy charge of £973 set out in the 2020 service charge accounts. Although the complaints are about the managing agents, not the accountants, the Tribunal considers the poor service in 2020 can be reflected by a discount of 50% from the accountancy costs, rather than making an arbitrary allowance against the rather larger managing

agents' fees. Under s.19(1)(b) of the Act, the Tribunal accordingly limits the relevant costs of the service charge accounting in 2020 by discounting the relevant costs by £486.50.

*Lack of responsiveness: the bike and bin stores*

41. The Applicants relied on numerous examples of alleged lack of responsiveness by the agents. But in particular, there had been a long-term issue about security to the bike store, which was continually being broken into. Eventually, a complaint was made by the owners of Flat 28 to the property Ombudsman, and a copy of the Ombudsman's decision of October 2019 is in the hearing bundle. It can be summarised as follows:

“The Complainants have explained that since moving into the Property, in June 2016, the doors and bike racks have not been fit for purpose which has caused a number of bicycles to be stolen and/or damaged. I understand the condition of the doors have also allowed access to unauthorised persons who have used the bike store for drug use and rough sleeping.

The Complainants have said that the issue of the doors' inadequacy has been reported to JPW on a number of occasions both by telephone and email. However, JPW have failed to address and remedy the matter sufficiently.”

The Ombudsman upheld part of the complaint:

“I have, therefore, supported this complaint. JPW's failure to provide a full company file has disadvantaged the Complainants who should be entitled to refer their concerns to my Office for an impartial examination. In the absence of evidence - that should have been provided in accordance with the TPO Obligations and the RICS Code - I have not been able to fully consider the issues raised.

In their email to the Complainants dated 28 November 2018 and their submission letter to my Office, **JPW acknowledged their shortcomings in communication with the Complainants**. This appears to be supported by the evidence of email communication I have been provided with from October and December 2018, and January 2019. I have, therefore, also supported this complaint to the extent that I do not consider JPW have treated the Complainants fairly and with courtesy during their communication.”

The Ombudsman awarded £150 compensation to the complainants.

42. The Respondents referred in some detail to the issues about mainte-

nance and repair of the bike store doors, and the issue was explored in the witness statement of Mr Sahota. There was an insurance claim, and JPW instructed contractors to undertake repairs to the door. In the face of further attempted / successful break-ins, JPW has since worked with the local authority and the police to find a solution. This resulted in the door being replaced in its entirety with a type recommended by the local authority to counter attempted break-ins. The approach taken was reasonable and proportionate throughout. The Respondents sought to comply with clause 9.2 of the RICS Code by repairing rather than replacing to ensure cost effectiveness for leaseholders, but subsequently reviewed that approach in the light of continuing issues. A similar approach had been taken to the lockable bin store doors. Reference was made to the Upper Tribunal decision in ***Kullar and Prior Place Residents Association v Kingsoak Homes Limited*** [2013] UKUT 15 (LC), where a deduction of 10% was applied to the management fees in circumstances where the managing agent was found not to have investigated or made attempts to resolve problems, did not check up on repairs once carried out, failed to address minor repairs reported to them and did not provide service charge budgets to tenants. Even on the Applicants' evidence, the services provided by JPW far exceeded that which was demonstrated in ***Kullar***.

43. The RICS code of Practice in relation to service charges and residential management (3<sup>rd</sup> Edition) at para 4.2 provides as follows:

“You should respond promptly to reasonable requests from leaseholders for information or observations relevant to the management of the property indicating a timescale by which the request will be dealt with. Relevant information may be provided, if the lease/tenancy agreement obliges or if it is reasonable. A reasonable charge may be made if appropriate and first agreed with the leaseholder. If there is a conflict with your duties to the landlord you should advise the leaseholder to seek independent advice. You should never mislead your client or leaseholders. In all communications you should be accurate, clear, concise and courteous.”

Having reviewed the correspondence on the various issues, the Tribunal agrees that in many respects, the delays in meeting complaints by leaseholders can be explained by a difference of view as to whether items should be repaired rather than replaced. The correspondence does show that by and large JPW acknowledged and replied to correspondence. Nevertheless, the Ombudsman's findings were based on an admission by JPW that it had not replied to correspondence with the leaseholders, and the admission directly relates to matters falling within para 4.2 of the RICS Code.

44. In ***Kullar***, the Upper Tribunal (Lands Chamber) commented:

“48. In our view the central problem that the tenants case here is that Priory Place is indeed a high maintenance block, in the city centre, with mixed residential/commercial use, including a lot of flats which are not owner occupied but let on short term tenancies. We do not consider the fee of £180 per unit unreasonable from our experience. However, we do consider having heard the evidence that there are examples of failure to communicate and inadequate management on the part of Curry's. We consider that it is unfortunate that there is not a signed management agreement and that no budgets are provided to tenants. In the round we consider that it would be fair to reduce the management charge by 10% in each year.”

45. The Tribunal agrees that a deduction of 10% represents the upper end of any deduction for lack of communication by a managing agent. In this instance, the underlying complaint in the Ombudsman's report related to a relatively minor item of cost, namely bike security and door entry. The Tribunal's assessment is that it would be appropriate to allow 5% from the relevant annual cost of JPW's management fees in 2019 (£13,100) to reflect the agent's admitted breach of para 4.2 of the RICS Code. The Ombudsman's report is not particularly clear about the period of default. But doing its best, the Tribunal applies the deduction over a period of 6 months leading up to the date of the Ombudsman's 2019 report. This produces a deduction of £325 from the relevant cost of management fees in that service charge year to reflect the fact that the service provided was not of a reasonable standard under s.19(1)(b) of the 1985 Act. The amount payable by the Applicants is limited accordingly.

#### *The Main door*

46. The Applicants say that in 2018, Mr Thompson and his wife Penny (Flat 22) raised an issue with JPW regarding the main entrance doors to the block, which were extremely heavy and difficult to open. This was of particular concern not only in relation to disabled residents and young mothers with babies, but to all residents and visitors to the block who find it difficult to get in and out. Mr and Mrs Thompson and other leaseholders requested the installation of a power assisted door be considered and quotes obtained but no action has been taken by JPW some 4 years later. Mr Thompson provided a witness statement explaining the difficulties caused to Mrs Thompson, who suffered from Rheumatoid Arthritis.
47. The Respondents contended that the main door is not in fact out of repair, and in any event as the door forms part of the 'Main Structure' which should be repaired rather than replaced. JPW had sought to adjust the door to make it easier to open and obtained quotes for the replacement of the door (even though this is not required under the terms of the Lease). But essentially, these the door has not been in a state of disrepair to warrant its replacement.



48. The Tribunal accepts that at heart, this is a difference of opinion about whether the door needs to be replaced with a more expensive system at (no doubt) considerable cost. The Applicants do not suggest the door is in disrepair, merely that it is too heavy, and would be better if it was replaced with a much better, power assisted front door. But the managing agents cannot really be faulted for adopting the stance they have taken – even if many of the leaseholders do not agree with the outcome.

### *Birds*

49. This issue can be dealt with relatively briefly. Mr Woodward gave evidence that he had been particularly concerned about issues caused by birds roosting on the roof of the building causing damage, noise and nuisance and the upkeep, maintenance and security of the block generally.

50. The Respondents acknowledge there is an issue with birds roosting on the roof of the Property and JPW was discussing it with the Applicants. But the bird problem had been put on hold due to the interaction the issue had with planned EWS1 roof works.

51. Plainly the agents cannot be blamed for birds nesting on the roof of a building on the waterfront in a major port. But in any event, this is not apparently a case of JPW failing to respond to complaints. There were reasons for the agents scheduling one set of works before another, albeit that the Applicants do not necessarily agree with these priorities.

### *The s.20 consultation*

52. A considerable amount of evidence is given about fire safety issues in the block. But the complaint in the Applicants' Statement of Case is limited to one aspect, namely the costs of a s.20 consultation in relation to proposed fire safety works.

53. Factually, Mr Schofield gives a helpful timeline in relation to the fire safety issues. The building is 7 stories, but extends to over 18m in height. Essentially, after the introduction of the EWS1 form in December 2019, the Respondents sought suitably qualified assessors to inspect the premises. Against the background of changing regulatory requirements, MAF Associates finally inspected in July 2021, and the premises were given a B2 rating in August 2021. The Fire Risk Assessment found that the external walls and balconies did not comply with fire safety requirements. In essence, the elevations were clad in aluminium-coated PPC over combustible foam insulation board, and the balconies had timber decking. The report recommended that the rigid foam insulation used within the PPC Aluminium system should be replaced with a non-combustible alternative, and that the Second Respondent should replace the timber on the balcony areas with non-combustible (A2 or better) alternative.

54. The leaseholders were updated on developments in August and September 2021. And in October 2021, the Respondent served s.20 Notices of Intent in respect of “Remedial Works following the EWS1 survey”. There then followed further 3D scan surveys of the property and a detailed costs plan from consultants in relation to the proposed works and PAS9980 survey commissioned in July 2022.
55. The Applicants suggest that the s.20 Notices of Intent were given before the extent of the works required had been determined. Fortunately, as a result of government intervention and the passing of the Building Safety Act 2022, it now appeared that the freeholder will be responsible for the implementation and payment in respect of these works. The s.20 process was therefore redundant. The Applicants were nevertheless concerned at the way in which the process was handled by JPW in relation to something which was of great concern to the leaseholders. It affected the safety of the block, the value and saleability of the flats and potentially involved significant expenditure through the service charge on remedial works.
56. The Tribunal does not accept the criticism of the services provided by JPW in relation to fire safety. It was entirely proper (indeed advisable) to serve a s.20 Notice of Intent at the earliest possible moment. Such a notice increases the information available to leaseholders, rather than reduces the opportunities for consultation and comment. Moreover, there is evidence the Respondents kept leaseholders informed at the earlier stages of the process over and above the statutory procedures. Managing cladding and fire safety issues is challenging, particularly against a picture of changing government regulation and subsidy. And in this case JPW appears to have done this work within their agreed fixed fee. The Tribunal is satisfied the Applicants have not discharged the burden of showing the services were not of a reasonable standard in this respect.

## Costs

57. The Applicants sought orders under s.20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (without prejudice to the contention that under the flat leases there is no contractual right for the Respondents to recover these costs). The test in ***Tenants of Langford Court v Doren*** LRX/37/2000 should be applied. It was just and equitable to make an order.
58. The Applicants have succeeded in one important respect, namely the level of management fees. They have also succeeded in obtaining a minor reduction in costs in other respects. But (it is assumed, for present purposes) that the Respondents have a contractual right to recover their costs through the service charge. Further, the costs in issue represent a relatively small element of the overall service charges. Finally, there is nothing in the Respondents’ conduct of the proceedings which merits an adverse award.
59. The Tribunal considers it is just and equitable that some element of the assumed costs incurred by the Respondents in connection with these Tribunal proceedings should not be added to the service charges. The Tribunal considers that (if they are entitled to recover any costs in connection with these pro-

ceedings through the service charge), the Respondents should be able to recover 80% of their costs in connection with the Tribunal proceedings. A s.20C Order will therefore be made in relation to the remaining 20% of costs, and the order is made in relation to the leaseholders listed in the s.20C application.

60. It is not necessary to make any order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

## **Conclusions**

61. Under ss.19(1)(a) and 19(2) Landlord and Tenant Act 1985, the relevant costs for management fees which are reasonably incurred (or reasonable in amount) for the 2018-22 service charge years shall not exceed £13,100pa. This reflects the evidence of the prevailing rates for managing agents' fees in Central Bristol. For the second half of the 2017 service charge year, the management fees are limited to £6,550.

62. Under s.19(1)(b) Landlord and Tenant Act 1985, the accounting services in 2020 were not of a reasonable standard, and the Tribunal accordingly reduces recoverable relevant costs by £486.50 in that year.

63. Under s.19(1)(b) Landlord and Tenant Act 1985, the services provided by the managing agents in 2019 were not of a reasonable standard, and the Tribunal accordingly reduces recoverable relevant costs by a further £325 in that year.

64. 20% of any costs incurred by the Respondents in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the Applicants.

## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

## **APPENDIX 1: MATERIAL LEASE COVENANTS**

### **THE FOURTH SCHEDULE**

**above referred to**

#### **Service Charge Covenants by the Manager**

1. Whenever reasonably necessary to light maintain cleanse repair renew and maintain the Common Parts the Manager's Land and the Parking Area including the boundaries thereof PROVIDED THAT the Manager shall not be liable in respect of any breach of the covenant unless and until it shall have received notice of the want of repair and shall have failed to remedy the same within a reasonable period thereafter.
2. To pay all existing and future rates taxes assessments and outgoings now or hereafter imposed on or payable in respect of the Common Parts Managers Land and the Parking Area including but without prejudice to the generality of the foregoing all accounts for private service organisations and companies and all electricity accounts and all other like service accounts.
3. To keep the Main Structures and the Common Parts properly repaired supported reconstructed maintained decorated and cleansed.
4. To make and enforce such regulations (if any) as it may in its absolute discretion consider necessary with regard to the Access and to comply with the regulations and requirements of the Local Authority.
5. To do all things necessary to comply with the obligations contained in or otherwise referred to in the Memorandum and Articles of Association of the Manager including the creation of such reserves as the Manager may deem prudent from time to time and to pay all fees and costs incurred by the Landlord in respect of the incorporation and formation and administration of the Manager and the paying of all interest or other financial charges which may be incurred on any monies borrowed for the purposes of any of the Manager's obligations or the observance or performance of any of its covenants herein contained and all fees and costs incurred in respect of all Certificates and accounts kept and audits made.
6. The Manager shall be entitled to employ and engage or to delegate any of its obligations and or powers to such Managing Agents servants agents managers contractors solicitors surveyors and accountants as it considers necessary or desirable from time to time for the performance of its obligations under this Schedule or for the exercise of any of its powers contained in the leases of the Flats and shall pay and discharge all such wages commissions fees and charges as shall be thereby incurred.
7. The Manager will at the written request of the Tenant enforce by all means available to the Manager the covenants entered into and to be entered into by each of the tenants of the Flats to each pay the Service Charge PROVIDED THAT:

7.1. The Manager shall not be required to incur any legal or other costs under this sub-clause unless and until such security as the Manager in its absolute discretion may require shall have been given by the party requesting action

7.2. The Manager may in its absolute discretion before taking any action under this Clause require the party requesting such action at his or their own expense to obtain for the Manager from Counsel to be nominated by the Manager advice in writing as to the merits of any contemplated action in respect of the allegations made and in that event the Manager shall not be bound to take action unless Counsel advises that action should be taken and is likely to succeed.

8. To keep in good and substantial repair and condition and wherever necessary to re-build and reinstate the Transmission Media serving the Building or any part thereof (including any communal water pumping system) except such as are maintained at the public expense or for the sole supply to one Flat

9. To pay all existing and future rates taxes assessments and outgoings now or hereafter imposed on or payable in respect of the Building excluding the Flats.

10. Within 21 days of the production to it of a duly executed and stamped (if necessary) Deed of Covenant complying with the provisions of Clause 13 of this Lease and provided that there shall not be due to the Manager any monies covenanted to be paid in accordance with this Lease whether by the person producing the Deed of Covenant or any predecessor in title at the cost of the Tenant give a certificate in accordance with the provisions of that Clause