11846

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LSC/2016/0122**
Property	:	**Flats 1 and 3, Waldo House, Trenmar Gardens, College Park, London NW10 6BD**
Applicant	:	**(1) Mr Conrad Knight** **(2) Dr Hannah Sweilam**
Representative	:	**In Person**
Respondent	:	**Notting Hill Home Ownership Limited**
Representative	:	**Glazer Delmar, solicitors**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**(1) Judge Amran Vance** **(2) Mr P Roberts, DipArch RIBA** **(3) Mr A Ring**
Date and venue of Hearing	:	**1 August 2016 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**5 September 2016**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the **1985 Act**") as to the amount of service charges payable by them for the service charge years 2010/11, 2011/12, 2012/13, 2013/14, 2014/15 and 2015/16 for Flats 1 and 3, Waldo House, Trenmar Gardens, College Park, London NW10 6BD.

2. Waldo House ("the **Building**") is a two-storey Edwardian warehouse converted into six residential flats in 1988. The ground floor flat occupies the whole of the ground floor of the Building. The remaining five flats are located at 1-2 Waldo House (which has its own common parts) and 3-5 Waldo House (which also has its own common parts). The lessee of the ground floor flat does not have access to the internal common parts of the Building.

3. Mr Knight is the lessee of Flat 1, a studio flat located on the first floor of the Building. His lease is dated 25 September 1989 and was entered into between (1) Addison Housing Association and (2) Mr Knight, for a term of 99 years commencing on 25 September 1989.

4. Dr Sweilam is the lessee of Flat 3, a one-bedroom flat on the first floor of the Building. Her lease is dated 2 November 1989 and was entered into between (1) Addison Housing Association and (2) Susan Therese Austin, for a term of 99 years commencing on 2 November 1989. She purchased her flat in June 2006.

5. The respondent is the freeholder of the Building.

6. The application was issued by Mr Knight alone and was received by the tribunal on 14 March 2016. An oral case management hearing took place on 7 April 2016 attended by Mr Knight. The respondent did not attend and was not represented. Directions were issued by the tribunal the same day ("the 7 **April Directions**"). Amongst other matters, the directions required the parties to exchange witness statements on or before 16 June 2016 and for the applicant to be responsible for preparing the hearing bundle, which was required to be sent to the

respondent and the tribunal by 15 July 2016. The hearing was to take place on 1 August 2016.

7. On 15 April 2016, the tribunal granted Dr Sweilam's request that she be added as an applicant to the application.

8. The 7 April Directions were varied on 23 May 2016 so that the respondent's statement of case was to be sent to the applicants on or before 9 June 2016 with the applicants' reply to be provided on or before 16 June 2016. The parties were notified that all other directions made on 7 April remained in force.

9. On 20 June 2016 the tribunal varied the date for exchange of witness statements to 24 June 2016.

10. There was substantial non-compliance with the 7 April Directions on the part of the applicants. The hearing bundle, which should have been sent to the tribunal and the parties by 15 July 2016 was not received by the tribunal until Wednesday 27 July 2016, two clear working days before the hearing date. The bundle contained a witness statement made by Dr Sweilam dated 22 July 2016.

11. As the respondent had not received a hearing bundle from the applicants by the date specified in the 7 April Directions it prepared its own bundle and sent copies to the tribunal.

12. Numbers in bold and in square brackets below refer to pages in the hearing bundle provided by the respondent unless preceded by the letter "A" in which case they refer to the bundle supplied by the applicants.

13. The relevant legal provisions are set out in the Appendix to this decision.

The Leases

14. The material provisions of their respective leases ("**the Leases**") are identical. Both leases require the landlord to provide services and for the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the Leases will be referred to below, where appropriate.

15. The terms of both Leases were varied following an application to this tribunal (when it was the Leasehold Variation Tribunal) (ref: *CAM/00AL/2009/0001*). The tribunal's decision, dated 3 December 2009, resulted in a variation of the definition of the common parts of the Building and also provided for: (a) both lessees to contribute one-

fifth of the Service Provision for the Internal Common Parts of the Building; and (b) Mr Knight to pay 11.7% and Dr Sweilman to pay 7.8%, respectively, of the Service Provision for those matters specified in clause 7(5) of the Leases, excluding the Internal Common Parts.

16. By virtue of this variation the Internal Common Parts are now defined as being *"the entrance, common hall, landings, lifts, staircases and other internal parts of the Building....."* used in common with the occupiers of the other flats in the Building. In addition, *"the remainder of the building"* is defined as being *"such other parts of the Building, including any garden area, not comprised in any Lease or the Internal Common Parts which are intended to be or capable of being enjoyed or used"*... in common with the occupiers of the other flats in the Building.

17. The relevant expenditure to be included in the Service Provision is set out at clause 7(5) and comprises all expenditure reasonably incurred by the landlord in connection with the repair, management maintenance and provision of services for the Building. By virtue of clause 7(4)(b) this includes an appropriate amount towards a reserve for future anticipated expenditure.

18. The accounting year ends on 31 March each year.

The hearing

19. The applicants appeared in person and counsel, Mr Byron Britton, represented the respondent. Also present, on behalf of the respondent, were Ms Carly Ward, a leasehold manager and Ms Coco Nash, the property management officer for the Building.

20. Immediately prior to the hearing Mr Britton provided a skeleton argument and a very short witness statement from Ms Nash which did no more than verify the contents of Ms Ward's witness statement dated 26 July 2016. During the course of the hearing, and at the tribunal's request, he provided an extract from the cleaning and caretaking contract relevant to the Building.

21. The tribunal first gave consideration as to whether or not to allow the parties to rely upon the following witness statements that had been served later than the date specified in the tribunal's directions (as varied): (a) Dr Sweilam's statement dated 22 July 2016; (b) Ms Ward's statement dated 26 July 2016; and (c) a supplemental witness statement from Ms Nash dated of 1 August 2016.

22. Dr Sweilam stated that she had sent her witness statement to the respondent's solicitors by post on 22 July. However, Mr Britton's position was that this had not been received and that the first time he

had been provided with a copy of the hearing bundle and Dr Sweilam's statement was on the morning of the hearing. We accept that Dr Sweilam posted the statement on 22 July but we also accept that the first time the respondent had sight of the statement was on the morning of the hearing.

23. After hearing the parties' representations, the tribunal decided to admit all of the witness statements with the caveat that any evidence contained in the statements that was not relevant to the list of issues identified by the tribunal at the hearing on 7 April was to be excluded. We considered that it would be inappropriate to admit evidence that was irrelevant to the issues the tribunal had previously identified as requiring determination at the case management hearing given the late stage at which this had been provided.

Inspection

24. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

25. Following concessions made by both parties the tribunal is required to determine the payability and reasonableness of service charges relating to:

    (i) Cleaning costs for the service charge years 2012/13, 2013/14, 2014/15 and the 2015/16 budgeted costs;

    (ii) The costs of cyclical works charged to the 2010/11 service charge year;

    (iii) The costs of roof works charged to the 2014/15 service charge year;

    (iv) The budgeted costs of management fees for the 2016/17 service charge year;

    (v) Reserve fund contributions demanded in the 2016/17 service charge year.

26. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Cleaning Costs

27. The costs demanded were as follows:

Year	Amount
2012/13	£1,192.29
2013/14	£1,607.18
2014/15	£1,352.65
2015/16 (budget)	£1,431.00

28. The respondent has entered into a qualifying long term agreement for the provision of cleaning services across its properties in west London commencing on 1 July 2012 and expiring on 30 June 2017.

The Applicant's Case

29. The applicants' position was that, prior to October 2012, cleaning was carried out on a fortnightly basis and a change to a weekly basis in 2012 was unnecessary given the small size of the common parts. They also contended that the service provided was very poor in quality.

30. Leaseholders had, they said, disapproved of the imposition of a weekly cleaning service at an AGM on 28 August 2013 **[50]** but this had not been acted upon.

31. As to the quality of cleaning services, they relied on a report prepared by the respondent's former property manager, Ms Gabriella Abraham, following a site inspection on 17 July 2014 **[246-255]** which identified issues with the poor standard of cleaning.

32. In addition, emails had been sent by Dr Sweilam in June and July 2015 **[52-3]** containing photographs of areas not cleaned properly; asserting that the cleaners only spent a few minutes in the building but had recorded much more time than that in cleaning task lists, marking as complete tasks that had not been carried out. The applicants asserted that carpets are not vacuumed regularly and when they are vacuumed, the task is not carried out properly. Further, window ledges are not cleaned and bins in the bin store are never disinfected or cleaned.

The Respondent's Case

33. The respondent's position was that the costs in dispute were reasonably incurred. Ms Nash's evidence was that complaints had been made about the standard of cleaning since the new contract had been introduced but that the respondent had responded appropriately to such complaints. There was, she said, a system in place whereby any identified issues with the cleaning of the Building were referred to the contractors to address. If they did not remedy the problem, they were then subject to financial penalties.

34. She also stated that she usually inspected the Building once a month and that in the twelve months since June 2015 she had found deficiencies in the standard of cleaning on only one or two occasions. She believed that about two or three referrals had been made to the contractors under stage one of the two-stage system and that these had been correctly remedied without the need to impose financial penalties.

35. In her view weekly cleaning was justified as one leaseholder often left a mess in the communal areas and because the communal areas saw quite heavy traffic.

Decision and reasons

36. We consider that there is sufficient evidence that the standard of cleaning provided in the 2014/15 and 2015/16 service charge years was not carried out to a reasonable standard.

37. Gabriella Abraham's report, following her inspection on 17 July 2014, was critical of the standard of cleaning in the Building. She identifies that:

    (i) staircases are not cleaned properly with dirty marks evident and that this was a problem that had been ongoing for some time **[247]**;

    (ii) the carpet on the first floor had not been cleaned properly with dirty marks evident **[248]**;

    (iii) marks on a light switch remained present despite having been identified by her in a previous inspection in June 2014 **[251]**;

    (iv) the doors to the bin store had not been wiped down or cleaned for some time and the internal bin store area had not been swept **[252]**

38. In addition, Ms Abraham appears to accept the leaseholders' assertions that the cleaners had been inaccurately recording the time spent on site. In her report she records that this was not acceptable and that these issues needed to be rectified by the contractors by the time of the next site visit.

39. Her cleaning issue report to the contractors dated 17 July 2014 **[255]** refers to lack of cleaning, dirty carpets and hard surfaces, and operatives signing in and out at incorrect times and not carrying out the assigned jobs on the cleaning list. She states that her inspections had identified that the standard of cleaning had decreased over the previous few months. There is no evidence from the respondent as to how the contractor's responded to this report.

40. As to the 2015/16 service charge year, in an email dated 8 June 2015 from Ms Taryn Collins, a property management officer with the respondent **[256]**, she requests that the contractors are reminded to clean as per the cleaning schedule task list and address issues raised by a leaseholder namely that there were mud marks on the front door (inside and out), grubby marks on light switches which had been present for several weeks, spot stains on the carpet and a need to clean the bin area doors. Again, there is no evidence from the Respondent as to how the contractor's responded to this request except for an email from the contractors, sent the same day, stating that the operatives would be informed **[256]**.

41. We question whether it is necessary to clean the communal areas weekly rather than fortnightly given the small size of those areas. Nevertheless, we do not consider the evidence indicates that this is an unreasonable position for the respondent to take. In our view the amount of the costs incurred and budgeted for would be reasonable provided that the service provided was of an adequate standard. However, this was not the case for the 2014/15 and 2015/16 service charge years and we consider that the amount that it is reasonable for the applicants to pay for each of those years should be reduced by 25%.

42. We therefore conclude that the amount payable by the applicants for the 2014/15 service charge year is their apportioned share of £1,014.49 and that the amount payable for the 2015/16 budgeted costs is their apportioned share of £1,073.25.

43. On balance, we are not satisfied, on the evidence available, that an inadequate service was provided in the 2012/13 and 2013/14 service charge years. There is no documentary evidence before us of complaints made by the applicants to the respondent within those service charge years. Whilst the contents of email from Dr Sweilam to the respondent dated 14 February 2013 **[48-49]** and the minutes of the Waldo House AGM held on 28 August 2013 **[50-51]** raise issues regarding the

frequency of cleaning there is no reference in either of those documents to the standard of cleaning being unacceptable.

2010/11 Cyclical Works

44. The specification for these works, prepared by Robson Walsh LLP dated June 2009 is at **[189-195]**, refers to external and internal repairs and redecorations, including replacement of casement windows and general repairs. The works were completed in about July 2010 and a final account was provided in August 2010 **[31-32]**. The sum demanded from the applicants in the 2010/11 service charge year was their apportioned share of: (a) £28,049.32 for works to the internal common parts; and (b) £3,765 for works to the Building not involving the internal common parts **[282]**.

45. Before us Mr Britton conceded, on behalf of the respondent, that the following costs identified in the final account were not payable by the applicants as service charge costs:

Reference	Description	Cost £ (exc. VAT)
4/B	Removal of remnants of asphalt roof flashing and graffiti	115
6/C	Flat 1 - Create opening in ceiling and supply and fit flat roof window	2,270
6/D	Flat 1 - Supply and fit velux window to flat hallway	1,281
12	Flat 1 - new velux rooflight to kitchen	470
13	Flat 1 - Paint entire ceiling of hallway	216

46. Following those concessions, the remaining costs in dispute were:

Reference	Description	Cost £ (exc. VAT)
5	Renewal of side hung casements	1,530
9	Attend a meeting with the tenants in flats 4, 5 & GF and investigate plumbing fault	1,470
18	Carry out timber repairs to windows and doors	2,105
14	Redecoration of common hallway walls to flats 1 & 2	460
15	Redecoration of common hallway walls to flats 3, 4 & 5	315
19	Electrical works	188
N/A	Robson Walsh Supervision Fee	2959.47

Item 5 - Renewal of side hung casements

The Applicant's Case

47. The applicants agreed that these works were required but argued that they were not carried out to an appropriate standard.

48. Dr Sweilam's evidence was that after the 2010/11 works, there had been a source of water penetration to the windows in her bedroom because they had not been made properly watertight on installation. This issue was raised in her email of 5 November 2015 (to which she says she received no response). She also referred to a visit to her flat on 11 April 2014 by Ms Abraham and a surveyor in which the surveyor apparently stated that 'dissolvable putty' rather than wood filler had been incorrectly used when the window was fitted **[A123, A132-7]**. In an

email dated 20 November 2015 an officer with the respondent **[245]** confirmed that it would be prudent to overhaul the windows in Dr Sweilam's flat as part of intended cyclical decorations to take place within the next 12 months.

49. The applicants also referred to the fact that in the same service charge year (2010/11) costs were incurred in replacing a window in Waldo House **[35]**. They suggested that these costs may have related to one of the windows that had been renewed in 2011.

50. In a letter dated 13 October 2015 **[38]** Dr Sweilam was informed by the respondent that it intended to replace/repair three windows each in flats 4 and 5 and was invited to make observations regarding two quotes obtained from independent contractors. In her email in response dated 5 November 2015 **[39]** she queried whether any of the windows in question had been fitted or restored during the 2010 cyclical works. Again, the applicants suggested that the fact that these windows needed to be replaced or repaired indicated that the 2010/11 cyclical window works may not have been carried out to an appropriate standard.

The Respondent's Case

51. Ms Nash's evidence was that at the time the 2010/11 cyclical works were carried out Robson Walsh stated that the condition of external joinery would continue to deteriorate and that virtually all windows were likely to be beyond economic repair by the next time the cyclical works were due and new double glazed windows should be installed. This is evidenced in their letter to the respondent dated 12 August 2010 **[197]**.

52. She also pointed out that in the email dated 20 November 2015, the respondent's officer pointed out that *"kiln dried wood or wood that is of inferior quality can shrink post installation" This is a result of the usual seasonal temperature and moisture fluctuations and also the way the flat is heated/or not".*

Decision and reasons

53. The tribunal determines that the amount payable by the applicants in respect of this charge item is their apportioned share of £1,275. This is because we consider that the amount that it is reasonable for the applicants to pay should include a 50% reduction in respect of the three windows replaced in Dr Sweilam's bedroom.

54. We accept as credible Dr Sweilam's evidence that soon after installation of these windows she noticed gaps between the windows and the frames. That this is the case is corroborated in Dr Sweilam's emails sent

to the respondent on 15 October 2015 **[A132]** and 5 November 2015 **[39]** which clearly refer to rot and disintegration of putty.

55. The respondent agreed that these windows are in need of being overhauled in its email to Dr Sweilam of 20 November 2015 and in our view the evidence indicates that the original installation was defective.

56. We note Robson Walsh's comments, after completion of the 2010/11 works, in their letter to the respondent of 12 August 2010 that the condition of external joinery would continue to deteriorate, requiring installation of double glazing the next time cyclical works were to be carried out. However, the reference in their letter is to "virtually all windows". We doubt that this was meant to include Dr Sweilam's bedroom windows which were replaced rather than repaired. It would be very unimpressive if they were suggesting that newly-installed windows only had a life span of five years.

57. If, as indicated in the respondent's email of 20 November 2015, kiln dried wood or wood of inferior quality has been used, allowing shrinkage post installation we consider this is evidence of poor materials being used which justify our decision to limit the amount payable for this service charge item.

58. We consider the other matters raised by the applicants referred to at paragraphs 49 and 50 above are speculative and unsupported by evidence.

Item 9 – Attending a meeting with the tenants in flats 4, 5 & GF and investigate plumbing fault

59. These costs were added to the major works by way of a contract instruction **[200]**. This instruction states that the costs concerned: attending meetings with the tenants of flats 4, 5 and the ground floor; carrying out tests to identify the reason why a waste pipe was overflowing from Flat 4 to the ground floor; and the carrying out of subsequent works.

The Applicants' Case

60. The applicants' position was that these costs were not recoverable through the service charge as they concerned works required to Flat 4 alone and not the communal areas of the Building.

The Respondent's Case

61. Mr Britton contended that these costs were incurred in respect of works to the communal waste pipework and were therefore recoverable as a

service charge cost. He accepted that this would not be the case if the costs did not concern works to the communal areas.

Decision and reasons

62. We agree with the applicants that these costs did not concern costs to the communal areas of the Building. This is clear from the narrative in the construct instruction which refers to matters such as re-levelling the waste pipework in Flat 4, removing the waste pipe assembly under the sink, and capping the washing machine upstand pipe.

63. Mr Britton suggested that the costs were incurred because the external down pipe on the exterior of the Building was misaligned but there is no evidence that this was the case. On the contrary, the narrative indicates that the works were all internal works to Flat 4. They are not costs relating to either the Internal Common Parts or the remainder of the Building, as defined in the Deeds of Variation, and are not payable by the applicants as they do not fall within the definition of recoverable expenditure set out in clause 7(5) of the Leases.

Items 14 and 15 – Redecoration of common hallway walls to flats 1 & 2 and redecoration of common hallway walls to flats 3, 4 & 5

The Applicants' Case

64. The applicants considered that they had been charged twice for the redecoration of the common hallways. They pointed out that:

(i) The works identified at items 5A and 5B of the Final Account concerned redecoration of the ceiling and walls in the common hallway/staircase area of Flats 1 & 2 at a cost of £715. They believed that these costs were duplicated at item 14 given the description in the Final Account of the costs relating to redecoration of the walls in the same area in a lighter colour.

(ii) The works identified at items 5D and 5E of the Final Account concerned redecoration of the ceiling and walls in the common hallway/staircase area of Flats 3, 4, and 5 at a cost of £1,235. The applicants believed that these costs were duplicated at item 15 which also referred to the redecoration of the walls in the same area in a lighter colour.

The Respondent's Case

65. The respondent asserted that there was no duplication of costs. The reason why the works at items 14 and 15 were necessary was because additional coats of paint were required.

Decision and reasons

66. We accept the respondent's explanation and do not consider that the evidence supports the contention that there has been duplication of costs. Items 14 and 15 were added to these major works by way of a contract instruction **[201]**. The description for Item 14 refers to the need for extra coats of paint to the walls of the common hallway to Flats 1 & 2 which were being painted in a lighter colour. The description for item 15 refers to additional coats of paint to cover the ceiling in the common hallway of Flats 3, 4, and 5.

67. In our view the description in the contract instruction to the existing ceiling in the common hallway of Flats 3, 4 and 5 being painted blue is very likely to be an error and the reference should have been to the existing ceiling being painted white. It would be unusual for a ceiling to be painted in blue and if this had been the case we would have expected there to be a reference to this in the schedule of works, but none is present **[194]**. Instead, it just refers to painting the ceiling with two coats of white emulsion.

68. In summary, there is insufficient evidence to support the Applicants' speculative assertion that costs have been duplicated.

Item 19 - Electrical works

69. The costs in dispute were added to the major works by way of a contract instruction which refers to electrical works to the common parts for Flats 3, 4 and 5 namely replacing a faulty lamp holder and replacing three faulty time lag switches.

The Applicants' Case

70. Mr Knight's position, as set out in his statement of case, was that these works had not been carried out.

The Respondent's Case

71. The respondent's position, as confirmed in Ms Nash's witness statement, was that the works in question had been carried out and that the costs had been reasonably incurred.

Decision and reasons

72. There is no evidence to support Mr Knight's suggestion that the works were not carried out. When asked by the tribunal, he conceded that he may not have known if there was a problem with the switches in the common parts to Flats 3, 4 and 5 given that his flat was in located in a different part of the Building.

73. We accept Ms Nash's evidence and determine that the costs were reasonably incurred and that they are payable by the applicants in full.

Robson Walsh Supervision Fee

74. These costs concern the costs charged by Robson Walsh for overseeing the major works.

The Applicants' Case

75. The only issue raised in Mr Knight's statement of case is that this work was not carried out by Robson Walsh.

76. In her witness statement Dr Sweilam suggested that Robson Walsh did not supervise the works properly in that they did not check if all the works had been carried out to a reasonable standard or at all. She referred to the fact that the Schedule of Works referred to the installation of only one roof light in Flat 1 whereas two were actually installed. She referred to an error in the documentation for the works as to the colour of the communal hallway walls and denied that external sensor lights had been fitted until several years after the works had been completed following complaints made by her. She also asserted that the removal of graffiti to the side wall of the Building, included in the Specification of Works, had not been carried out to date.

The Respondent's Case

77. The respondent accepted that the graffiti had not been removed and that is why they had agreed that the costs of removal should not be included in the service charge. However, it contended that these works had to be managed and that the fees charged were reasonable.

Decision and reasons

78. We determine that these costs are payable by the applicants in full and that they have been reasonably incurred. The points made by Dr Sweilam in her witness evidence were not raised by Mr Knight in his statement of case (aside from the graffiti) and the first time that the respondent had notice of these assertions was when it received her

witness statement on the morning of the hearing. It did not have an opportunity to properly prepare a response to these allegations and, as such, limited evidential weight can be accorded to her evidence.

79. In any event, we are not persuaded on the evidence, even having full regard to the points made in Dr Sweilam's statement, that these costs have been unreasonably incurred. Mr Knight's blunt assertion that no works were carried out is clearly wrong. Robson Walsh would have had to write the Specification of Works, administer the contract, deal with the variations to the contract specification, probably deal with certification of contract payments and settle the final account. These tasks are standard in works of this nature. We note that Robson Walsh are a member of the Royal Institution of Chartered Surveyors and see no reason to doubt that they would depart from the required professional standards of a member of that organisation.

80. Dr Sweilam appears to have misunderstood the position with the roof lights installed in Flat 1. Only one light was listed in the original Specification of Works. The other was added by way of a contract variation. Robson Walsh appears to have acted entirely appropriately in this respect.

81. We accept that Robson Walsh erred in not ensuring that the graffiti was removed but in our view this does not justify a reduction in the modest costs sought. We do not accept that the asserted error regarding the colour of the communal hallway is of any relevance (and are not clear which contract documentation Dr Sweilam is referring to).

82. We are not prepared to accept as fact that there was a delay in the external sensor lights being installed given that the respondent was not in a position to respond to this allegation due to the late service of Dr Sweilam's statement. However, even if we accepted that such a delay had occurred we would still not have determined that Robson Walsh's supervision was so poor as to justify a reduction in their fee. Their fees amount to 10% of the contract sum. We consider this to be modest and entirely appropriate for a contract of this size and nature.

2014/15 Roof works

83. These costs concerned works to the flat roof of the Building carried out in September 2014 at a cost of £5,940 including VAT **[85]**.

The Applicants' Case

84. Mr Knight's position was that the costs incurred should not be passed through the service charge as the works were only required because the respondent failed to ensure that previous works, carried out in

February 2003, were carried out properly. It appears that both the 2003 and 2014 roof works involved replacement of the roof overlay.

85. Mr Knight's evidence was that both before and after the 2003 works were completed he had experienced problems with rain water penetration into his flat. This went on until the 2014 roof works were carried out and resulted in the need for him to make three separate insurance claims because of damage caused to his property. In an email dated 25 February 2014 to Ms Abraham, the property management officer at the time **[79]**, he stated that he had experienced three incidents of water penetration over the previous four years. He also asserted that the respondent had failed to properly maintain and clean the roof and downpipes.

86. He pointed out that the respondent had identified, soon after the 2003 roof works had been completed, that water was pooling on the roof above his kitchen but failed to ensure that the problem was addressed. This is recorded in a note of a site visit made by Troy Husbands, an officer of the respondent on 29 January 2003 **[70]** In a fax message on 5 February 2003 **[71]** Mr Husbands told a company called Anderson Waterproofing that his inspection had identified that water had pooled around an inch deep and had no natural way of draining away to the nearest downpipe. Mr Husbands asked Robson Walsh for advice on how to deal with the problem. The tribunal is unaware as to whether or not a response was received to that fax.

The Respondent's Case

87. Ms Nash's evidence was that the respondent had asked contractors and surveyors to produce a report to identify whether or not previous roof works had contributed to the leaks experienced by Mr Knight. They concluded that this was not the case and that it was the design of the roof that was the main cause for the pooling of water which had weakened the membrane to the roof and necessitated the 2014 roof works.

88. This information had been conveyed in the respondent's letter of 18 July 2014, responding to a complaint made by Mr Knight **[84]**. In that letter the respondent's Head of Leasehold Services, Mr Kevin Dunleavy, acknowledged that Mr Knight had experienced water penetration into his flat and that the action taken to date had not provided a long term solution to the issue. He pointed out that a number of reports from surveyors and contractors had been obtained to identify the cause of this leak and that repairs had been carried out as a result of all of those reports. Mr Dunleavy states that these repairs had stopped the pooling of water for a number of months, and in some cases years, before the leak returned following heavy rainfall.

Decision and reasons

89. We determine that these costs are payable by the Applicants in full and that they have been reasonably incurred.

90. We do not doubt Mr Knight's evidence that he has experienced water penetration both before and after the 2003 works and that this caused him significant inconvenience. His argument, in summary, is that the 2014 costs were unreasonably incurred because they would not have been necessary if the 2003 works had been carried out properly.

91. However, subsection 19(a) of the 1985 Act requires this tribunal, when examining whether costs have been reasonably incurred, to determine whether, *at the date the respondent incurred the costs*, it was reasonable for it to have done so. We cannot take into account the issues of historic neglect raised by Mr Knight because of the limitation imposed on us by subsection 19(a) of the 1985 Act.

92. As the applicants are not challenging the need for the 2014/15 Roof works, the standard of the works carried out, or the quantum of the costs incurred the tribunal must conclude that it was reasonable for the respondent to incur these costs.

93. Even if we were entitled to take into account the issues of historic neglect raised by Mr Knight we are not persuaded, on the evidence before us that the 2003 works were carried out defectively. There is simply insufficient evidence before us to reach that conclusion. Mr Knight's oral evidence was that the key problem was that a down pipe on the flat roof was set too high meaning that water did not drain properly and pooled on the roof. This has since been lowered.

94. We do not have a specification for the 2003 works and do not know whether the scope of those works included any work to this downpipe. Mr Knight's evidence, that the water penetration problem preceded the 2003 works, seems to support the respondent's contention that it was the design of the roof that was the main cause for the pooling of water. However, the evidence before us is inconclusive.

95. It is clear that there was a long standing problem of water penetration into Mr Knight's flat and that it took the respondent a very long time to finally resolve that problem. If Mr Knight considers he has suffered loss or damage as a result of an unreasonable delay by the respondent in addressing this problem, he may wish to seek advice on alternative legal remedies open to him.

Management fees for the 2016/17 service charge year

96. The estimated management fees for this year were £1,734 **[102]** compared to the actual costs of £929 in the preceding year.

The Applicants' Case

97. The applicants contended that the increase in the management fees was excessive and identified long running issues of asserted poor management, relying upon several previous tribunal decisions involving the parties.

The Respondent's Case

98. The respondent's case was that the costs budgeted for were reasonable. Exhibited to Ms Nash's witness statement was a copy of the respondent's Leasehold Customer Guide **[207-236]** which she said sets out details of the tasks carried out for which the charge is levied. Exhibited to Ms Ward's witness statement is an email from Hallmark Managing Agents stating that it would charge around £4,000 per annum for managing a similar scheme.

99. The budgeted sum represents a considerable increase from the previous years' charge. When asked why this was the case, Ms Ward explained that up until the setting of that budget the leaseholders had been undercharged. They had previously been charged the respondent's annual rate for a street property with no communal areas (£155 per unit) when they should have been charged the rate payable for a building that has an element of block maintenance (£289 per unit). That anomaly had been identified following an audit of all of their housing stock. She also pointed out that the budgeted sum of £1,734 is apportioned so that Mr Knight pays 11.7% (£202.88) and Dr Sweilam 7.8% (£135.25).

Decision and reasons

100. We determine that these costs are payable by the applicants in full and that they have been reasonably incurred.

101. The applicants' assertions as to past poor management are not relevant to the question the tribunal has to determine which is whether the budgeted sum for this year is reasonable in amount. We have no hesitation in concluding that that they are. We accept Ms Nash's evidence that management services are being provided as identified in the Leasehold Customer Guide. We also accept as credible Ms Ward's explanation that the leaseholders had been undercharged in previous service charge years.

102. In our experience, and in the absence of alternative quotes to the contrary, we consider that the sums payable by the applicants, £202.88 and £135.25 are at the low end of what can be considered reasonable for a building of this size and nature.

Reserve fund contributions: 2016/17 service charge year

103. In the 2016/17 budget the respondent has included a total sum of £14,000 by way of a reserve fund contribution.

The Applicants' Case

104. The applicants' considered these amounts to be excessive. They had been making regular contributions into the reserve fund and believed that there were sufficient funds to cover the next cyclical works for the Building. Further, they considered cyclical works should take place every seven years and not every six years and that as there were no current problems with the roof and the windows the cost of the next cyclical works should be lower than the last set of works in 2010.

The Respondent's Case

105. Ms Nash's evidence was that following a condition survey of all their housing stock the respondent had identified that about £25,000 - £30,000 of work was required to the Building within the next 12-18 months and an additional £70,000 over the next 30 years. Schedules extracted from that stock condition survey identified that the estimated costs over the next 30 years were £101,998 for 1-2 Waldo House **[205]** and £116,022 for 3-5 Waldo House **[206]**.

106. She confirmed that at the start of 2016/17 the sums held in the reserve fund were £9,158.19 for the building and £4,403.01 for the communal parts, totalling £13,561.20. She stated that the anticipated costs for the 2016/17 cyclical works were £85,000 and that the existing reserve fund was therefore inadequate.

Decision and reasons

107. By the time the next cyclical works are carried out it will have been over six years since the 2010 cyclical works. In our view it is reasonable for a prudent landlord to carry out such works on a six-year cycle as significant works, including redecoration, are likely to be needed.

108. We consider that Dr Sweilam was right to query why the scaffolding costs identified in the stock condition schedules were so high. A total of £30,000 has been allocated for each set of cyclical works. Given that the scaffolding costs for the 2010 cyclical works were only £2,610 this seems manifestly excessive.

109. Despite this reservation we have concluded that the amount demanded for the 2016/17 reserve fund contribution is reasonable. The 2010 cyclical works cost over £30,000 including fees and VAT. Taking into

account our determinations above and allowing for a reduction in the extent of the works required, for the reasons suggested by the applicants, we consider a figure of £25,000 would be a reasonable budget for the next cyclical works.

110. There is, at present, a total of £13,561.20 in the reserve fund. That is a shortfall of, say, £11,500 from our suggested figure of £25,000. However, a prudent landlord would not want the reserve fund to drop to zero and, as such, we do not consider the amount demanded of £14,000 to be unreasonable.

Application under s.20C

111. In the application form and at the hearing, the applicants applied for an order under section 20C of the 1985 Act.

112. We have regard to the fact that the applicants have successfully challenged the cleaning costs for two service charge years and that they also successfully challenged some of the costs of the 2010/11 cyclical works, with a significant number of additional items dropped by the respondent at the hearing.

113. On balance, having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Final Remarks

114. In an email received after from Mr Knight the hearing of this matter dated 9 August 2016 he asks for any "refunds" of service charges to be made inclusive of VAT. The tribunal's jurisdiction in this application is to determine the amounts payable by the applicants towards the service charges in issue. It is not to determine what actions the respondent should take following the determination. Having said that, we expect that the respondent will wish to credit the service charge accounts of the applicants in respect of the sums that we have determined are not payable by them. In doing so it is logical that if VAT on those sums was demanded from the applicants that this too should be credited.

115. The tribunal has also received a letter from Dr Sweilam dated 14 August 2016 but its contents are not relevant to this determination.

Name: Amran Vance **Date:** 5 September 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

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

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

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

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

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

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

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

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

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

Section 20C

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

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;