



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

Case Reference : **CHI/00ML/LSC/2020/0041**

Property : **Flat 55 Pullman Haul, 39 New
England Street, Brighton, East Sussex
BN1 4LS**

Applicant : **Daniel and Kimberley Godley-
Hendon**

Respondents : **(1) Moat Homes Limited
(2) One Brighton (New England
Quarter) Management Limited**

Type of Application : **The Landlord and Tenant Act 1985,
section 27A**

Tribunal Members : **Judge M Davey
Mr J Reichel, B.Sc. MRICS**

Date of deliberations : **18 December 2020**

**Date of Decision
with reasons** : **25 January 2021**

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DECISION

**The disputed service charges for Flat 55 Pullman Haul in 2017-2018
and 2018- 2019 were payable and reasonable in amount.**

REASONS

The Application

1. By an application dated 12 May 2020 (“the Application”), Daniel and Kimberley Godley-Hendon (“the Applicants”), the joint under-lessees of Flat 55 Pullman Haul, 39 New England Street, Brighton, East Sussex BN1 4LS (“the Flat”) applied to the First-tier Tribunal (Property Chamber) (“the Tribunal”), under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination as to the payability and reasonableness of the service charge, under their (under)lease of the Flat, for the service charge years 1 April 2017 to 31 March 2018 and 1 April 2018 to 31 March 2019. The First Respondent to the Application is the head leaseholder landlord, Moat Homes Limited (“Moat”) and the Second Respondent is One Brighton (New England Quarter) Management Limited, the Management Company under Moat’s headlease.
2. Mr W.H.Gater issued Directions on 20 July 2020 stating that it was likely that the application could be determined on the papers without an oral hearing in accordance with Rule 31 of the First Tier Tribunal Property Chamber Procedure Rules 2013 and setting out a timetable to enable the matter to be determined. On 12 October Judge E Morrison issued further Directions adding the Second Respondent as a party to the Application and setting out a revised timetable.

The Leases

3. The development known as One Brighton comprises two buildings (Blocks E and F). Block E (“Brighton Belle”) is eleven storeys high and contains 109 residential apartments. Block F (“Pullman Haul”) is an eight-storey building with 63 residential apartments, together with five commercial units and a two level community area.
4. Moat, a charitable registered provider, holds a lease (“the Superior Lease”) of 54 residential units at One Brighton; three in Brighton Belle and 51 in Pullman Haul. The freeholder under that lease, which was granted on 18 March 2008, for a period of 125 years less 10 days from 25 December 2007, is Crest Nicholson Bioregional Quintain LLP. The Management Company, which is a party to the Superior Lease, appointed Stiles Harold Williams LLP to manage the development.
5. Twenty five of Moat’s 54 flats at the development (including Flat 55 Pullman Haul) are the subject of shared ownership leases, whilst the remaining 29 are let by Moat to periodic tenants under social rented agreements. The Applicants hold a shared ownership under-lease of the Flat (“the Shared Ownership Lease”), dated 30 November 2009 and made between the First Respondent Moat

Homes Limited (“the Landlord”) and the then underlessees, Jessica Vallance and Amber Arkell. The under-lease was granted for a term of 125 years less 15 days from 25 December 2007.

6. The structure of the Superior Lease is that the Management Company undertakes to supply services to the development for which the headlessee (Moat) will pay “The Tenant’s Proportion of the Maintenance Expenses”.
7. The Maintenance Expenses are the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company in carrying out the obligations in the Sixth Schedule of the Superior Lease. Part A of the Schedule contains the Estate Service Charge, Part B the Block Service Charge, Part C a Parking Spaces Service Charge and Part D Costs Applicable to any or all of the previous parts of that Schedule.
8. Paragraph 12 of the Sixth Schedule to the Superior Lease provides that the maintenance expenses include “Such sum as shall be considered necessary and proportionate by the Management Company ...to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the maintained property (save for any part or parts thereof which are specifically addressed in Part B of this Sixth Schedule).”
9. The Tenant’s Proportion is as set out in the Seventh Schedule to the Superior Lease. Parts A, B and C are the amounts attributable to the costs incurred in relation to the matters mentioned in the corresponding Parts A, B and C of Schedule 6. The Management Company’s costs incurred in relation to these matters are also recoverable as part of the Tenant’s Proportion by virtue of Part D of Schedule 6 and the Seventh Schedule.
10. The structure of the Shared Ownership Lease is that the underlessees pay a specified annual rent (in respect of the proportion of the ownership that they have not yet bought), a Service Charge (which includes a managing agent’s fee for management of services) and a Management Charge (the last being the Landlord’s (i.e. Moat’s) administrative costs in respect of the underlease and management of payments thereunder). The Shared Ownership Lease provides that all of these sums are payable monthly on the first day of each month (Clause 3(1)).
11. The Service Charge is defined, in clause 1(2)(c) of the Shared Ownership Lease, as meaning all sums payable under the Superior Lease so far as the same are attributable to the Flat. This includes, but is not limited to, the Rent and the Tenant’s Proportion of the Maintenance Expenses as defined in that Lease. (The Rent is a ground rent payable by SHW to a third party).

The Service Charge Machinery of the Leases.

12. Paragraph 5 of Schedule 7 to the Superior Lease provides that at the end of each year ending on the last day of February, the Management Company shall as soon as practicable thereafter provide an account of the Maintenance Expenses incurred in that year (distinguishing between actual expenses and reserves funds for future expenditure)
13. Paragraph 6 of Schedule 7 provides that the Tenant must pay quarterly payments of the Tenant's proportion in advance each year on 1 March, 1 June, 1 September and 1 December based on the estimates of anticipated expenditure by the Management Company or its managing agents.
14. Paragraph 7 of Schedule 7 provides that within 21 days of the service on the Tenant of a certificate under paragraph 5 the Tenant shall pay any deficit whereby the actual expenses incurred exceed the budgeted sums paid in advance under paragraph 6. If there has been an overpayment this will be credited against future payments due.
15. Clause 3(2)(c) of the Shared Ownership lease provides that the obligations owed by the lessee under the Superior Lease are owed by the underlessee of the Shared Ownership Lease to the landlord under that Shared Ownership Lease. It also obliges the underlessee to pay the Service Charge as defined in the Superior Lease. However, it is specifically provided that any sums thereby due from the underlessee shall be payable to the landlord under the shared ownership lease in such manner as that Landlord shall determine. Thus Moat is able to pass on to the underlessees liability for payment for services provided by the Management Company under the Superior Lease through its agent SHW.

The Application

16. By their Application the Applicants challenge specific service charges costs in the years 2017-2018 and 2018-2019 as charged by Moat.

The items challenged fall under the following headings:

2017-2018

PMA – Payment to Managing Agent - £1,521.01

PMH – Payments to MHA's Homeowners - £1,354.32

The Applicants ask

- (1) what these charges are;
- (2) why they differ from the original budget;

- (3) how they have been calculated by Moat;
- (4) whether they are reasonable.

2018-2019

PMW – Payment to MA Water - £617.61

PMH – Payments to MHA’s Homeowners - £1054.40

The Applicants also ask the same four questions in relation to these charges.

- 17. More generally the Applicants state that their service charge is £3,600 (2018-19), which seems to them to be inordinately high. They also consider that “Moat continually fails to budget sufficiently for the payments to the managing agent and yet expects to recoup this from shared owners at the end of the year.” The Applicants further comment that their service charges have gone up by six times the inflation rate.

The First Respondent’s Statement of Case.

- 18. The First Respondent’s Statement of Case, dated 28 September 2020, was signed on behalf of Moat by Ms Danielle Crocker, who is Moat’s Service Charge Officer.
- 19. In that statement it is explained that the service charge costs, for which Moat is billed by the Management Company under the Superior Lease, are broken down on Moat’s system into four service charge elements. They are: PMA, PMF, PMH and PMW.

PMA (Payment by Moat to Managing Agent) is the costs of services which are payable by all residents save that it does not include any management fees paid to the Managing Agent or any costs recoverable from home owners such as repairs, buildings insurance and provisions for future major works. It is in effect the Estate maintenance charge.

PMF (Payment by Moat to Managing Agent) is the Managing Agent’s management fee charge.

PMH (Payment by Moat to Managing Agent – Homeowners) is the costs incurred for repairs, buildings insurance and major works or sinking fund contributions. These costs are only passed on by Moat, via the Service Charge, to homeowners. This is the block maintenance charge.

PMW is the personal water and sewage rates charged directly from the Managing Agent to Moat and passed on to residents. The individual water charges are based on floor area.

- 20. The First Respondent explained that the reason the final charge for 2017-2018 differed from the initial estimate was that when the estimate

was prepared by Moat at the start of the year it did not have SHW's budget for that year. It therefore used the 2016-2017 budget uplifted by 2%. By the end of 2017-2018 Moat had become aware that SHW had included in its estimate for that year, new costs for planned internal decoration works, which Moat was not aware of at the time it set its service charge estimates.

21. The First Respondent says that residents were provided with the following explanation on their year-end service charge statement.

“2017/2018 Year End deficit due to the increase of the Managing Agent Budget.

“The 2017/2018 Budget has been increased to include a fund to cover the expenditure to undertake improvements to the Communal areas of One Brighton such as internal decoration, as well as renewal/repair within these areas where required.”

22. The First Respondent says that when it prepared its service charge estimate for the year 2018/2019 it was based on the SHW budget for 2017/2018 but excluding the amount of £58,500 towards internal repairs/decoration, as Moat did not anticipate this cost being applied again in the 2018/2019 year. Moat uplifted the remainder of the SHW estimated costs for 2017/2018 by 3%. When the service charge reconciliation for 2018/19 was completed the First Respondent was now aware that the final service charge expenses for that year were higher than estimated in their earlier budget. The reason for the difference was explained to residents in a covering letter. The differences were accounted for by (1) an increase in the SHW budget for personal water and (2) information received from the managing agents in relation to the replacement of communal lighting as part of the works to redecorate internal communal parts of the building.

The Second Respondent's Statement of Case

23. The Second Respondent provided a statement of case, dated 30 October 2020 and signed by Nigel Duffy, Property Manager of SHW, which says that each year SHW prepare an annual budget, which is approved by the Second Respondent. The Budget is based on the previous year's expenditure and anticipated future costs. It is then sent to the First Respondent with an invoice for the charges. SHW sent the Budget for 2017-18 to Moat with a covering letter dated 30 March 2017 and requested its remittance by return.
24. The Second Respondent confirmed that the budget for 2017-18 had been increased to allow for anticipated additional costs, such as the requirement to increase the caretaker hours by 2 hours a week, necessary repairs to the CCTV and to carry out regular testing of the fire safety equipment to comply with fire regulations.

25. The Second Respondent also confirmed that the budget included an element of £58,500 being a contribution to the internal reserve account. The comments on the budget stated

“In order to comply with the terms of the lease it is necessary to redecorate the internal communal parts of the building. As this has not been carried out in full since completion took place, the directors have authorised this work to be undertaken this year. The cost allowance is an estimate at this stage and may differ once tenders are obtained. A full consultation process will be carried out to comply with Landlord & Tenant legislation.”

26. The covering letter which accompanied the budget, and is dated 30 March 2017, explained that the figure was based on an estimate from the building surveyor department prior to a specification being prepared and going out to tender.

27. The Second Respondent stated that the increase in the 2018 - 2019 budget relating to Moat’s PMH category was the result of the collection by SHW of a £28,500 contribution to the internal reserve account. It was explained in the comments on the budget as follows:

“In order to comply with the terms of the lease it is necessary to redecorate the internal communal parts of the building it has been agreed that the communal lights need to be replaced at the same time as the current fixtures are not economical to replace or run. The cost allowance for this reserve fund is an estimate at this stage and may differ once tenders are obtained. A full Consultation process will be carried out to comply with Landlord & Tenant legislation.”

28. It was also stated in the cover letter, from SHW to Moat, dated 28 March 2018, that

“As with last year’s budget the additional heading has been included for schedule 2 & 4 toward the internal common way redecoration reserve account. In order to comply with the terms of the lease the Management Company are obligated to carry out cyclical internal redecoration. As previously advised the Board of Directors have agreed to carry out internal redecoration this year in 2018-2019.

The yearend 2019 budget figures inserted in the internal decorations reserves is an estimate towards replacing the commonways lighting as part of the internal major works decoration project. A full tender exercise will take place next month and you will be fully consulted to comply with legislation under the Landlord & Tenant Act, Section 20.

Last year a first stage Section 20 notice was issued in regard to the internal redecoration however an amended notice is due to be issued shortly to include the common way lighting which needs to be replaced

at the same time as it is felt that the current fixtures are not economical to replace and run.”

The Law

29. The law is set out in the Annex to these reasons.

Discussion and determination

30. This Application has been prompted by the perception of the Applicants that their service charge is high, relative to the other payments that they make in respect of their Flat by way of rent and mortgage repayments. This perception has been more particularly fuelled by them having received a demand from their landlord, Moat, the First Respondent, for unexpected balancing charges for services, following the end of the service charge years 1 April 2017 to 31 March 2018 and 1 April 2017 to 31 March 2019.
31. The Application has also come about in part because the Applicants are confused as to what is meant by certain service charge heads of expenditure. This is because when Moat presents the end of year service charge statement and accompanying information to its leaseholders, including the Applicants, its accounting system and method of charging classifies the costs in a different way to that of the costs identified by SHW in its budget and end of year statement that it sends to Moat.
32. As far as 55 Pullman Haul is concerned, SHW’s service charge budget breaks down into the following heads of expenditure identified as Schedules: Estate charges (schedule 1); Block F charges (schedules 4 and 5); Water charges (schedule 6) and Management Fee (schedule 7). It is unclear as to what these Schedules refer to. They certainly do not refer to either the Superior Lease or the Shared Ownership Lease.
33. These charges are then identified differently on Moat’s service charge system (and service charge statements) using the following classification:

PMA meaning service charge payments made by Moat to SHW and recharged to all residents but excluding management fees and costs payable only by home owners. (This is the Estate charge).

PMH meaning payments made by Moat to SHW in respect of shared ownership dwellings only and therefore only recharged to the leaseholders of those dwellings. It covers repairs, buildings insurance, major works and sinking fund contributions. (This is the Block maintenance charge).

PMW meaning personal water and sewage charges raised by the Managing Agent and recharged to residents.

PMF meaning the Managing Agent's management fee recharged to residents.

Moat's own management fee is identified separately on service charge statements.

34. Thus the questions asked by the Applicants are answered as follows. First, with regard to the service charge year 2017-2018: the payment identified as "PMA – Payment to Managing Agent - £1,521.01" refers to the payment for estate services payable by all residents. The payment identified as "PMH – Payments to MA's Homeowners - £1,354.32" is actually the payment for other services made only by leasehold owners of each block, such as the Applicants.
35. Second, with regard to 2018-2019, the PMH payment is similarly explicable as above.
36. The Applicants also ask why the figures for Moat's categories differ from the budget estimates. The reason is as follows.
37. The Superior Lease provides for a service charge year ending on the last day of February each year. It also makes provision for advance quarterly service charge payments based on a budget, payments to be made on the first day of March, June, September and December respectively each year. As soon as possible after the end of February the managing agent must provide a statement of actual costs and then either demand payment of any deficit or credit the leaseholder with any surplus.
38. Despite the terms of the lease, in practice both SWH and Moat operate on the basis of a year running from 1 April to the following 31 March. Thus SWH and Moat prepare budgets before the start of the year and issue final statements that produce a deficit or surplus after the end of each financial year. Unfortunately for all concerned these two events are not synchronised.
39. As explained in the Statements of Case given by the First and Second Respondents, when Moat prepares its budget estimates for the coming year it does not have to hand SHW's estimate for that year. In each of the years challenged by the Applicants there was a new item of which Moat was unaware when it set its budget.
40. However, this does not alter the fact that, on 30 March 2017, SHW sent its budget for 2017-2018 to Moat together with a covering letter that explained the inclusion of the sum of £58,500 in respect of planned internal block decoration works. Similarly, on 28 March 2018, SHW sent its budget for 2018-2019 to Moat together with a covering letter that explained the inclusion of the sum of £28,500 in respect of planned internal block lighting works.

41. It is unclear why residents were not informed of these changed circumstances earlier than some 18 months later when they received from Moat their final service charge statement and balancing charge for the years in question. This could have been avoided had SHW and Moat co-ordinated their budget preparation and issue dates. However, that said, the commonly found two stage system of estimated and final charges always creates the possibility of an unexpected item of expenditure arising in the interim period. It would nevertheless be good practice for Moat to notify residents of such items, when they become apparent, particularly where large sums are involved.
42. The same explanation applies in the case of the water charges. Like the other costs these are invoiced to Moat by SHW based on estimated amounts which are then passed onto residents during the same year in which they are received plus a balancing charge or credit as the case may be (which is received after SHW's year end and therefore passed on by Moat to residents during the next accounting period).
43. This caused a particular problem with regard to the water charges made in the year 2018-2019. The Respondents stated that the PMW payment for that year is the water charges notified and charged by SHW to Moat and passed on to leaseholders by Moat. The Applicants question why their final PMW charge for the year (in which total water costs were £49,778.00) was apparently £617.61 when the estimated amount had been £292.08 (based on estimated total water costs of £52,000).
44. The answer to this conundrum was provided by Moat, in a Supplementary Statement, received by the Tribunal on 18 January 2021, following a request by the Tribunal for further information.
45. The explanation is as follows. The "actual" PMW coded charge of £617.59 for water in 2018-2019 reflected not just the actual water costs for that year but also a balancing charge of £55.21 in respect of the year 2017-2018, which SHW sent to Moat in 2018-2019. It also reflected a balancing credit of £75.27 in respect of the year 2016-2017, which was credited to Moat by SHW in 2018-2019.
46. This came about because there had been an advance payment of £310.01 in 2016-2017 (which was wrongly coded to PMA) and therefore when the actual costs proved to be £234.74 there was a credit of £75.27.
47. To correct the error in coding, Moat, in its 2018-2019 end of year statement, debited the PMW charge by £234.74 but credited the PMA item of the account by £310. Thus the Applicants thereby received the benefit of the £75.27 credit.
48. Furthermore, we are also told that because the actual water cost for 2018-2019 proved to be £313.64, rather than the £327.64 previously

charged, a credit of £14 was shown on the 2019-2020 service charge statement.

49. It follows that the balancing charge in 2018-2019, for PMW water of £325.53, did not mean that the Applicants were charged £617.59 for water in 2018-2019. The balancing charge in reality was £617.59 less the credit to PMA of £310.01 = £307.58 less £14 (credited in 2019-2020) = £293.58 less the initial interim payment of £292.08 = £1.50. Thus the total payment by the Applicants for water in 2018-2019 was £293.58.
50. It is therefore clear that the charges for water made to the Applicants by Moat reflected, according to Moat, the actual bills from the water supplier. However, it is regrettable, as Moat now acknowledges, that the final service charge statement for 2018-19 lacked transparency and led to understandable confusion on the part of the Applicants (and initially the Tribunal).
51. The Applicants also ask how the service charges are calculated. The answer, provided by the Respondents, is that they are based on estimated or actual costs (as to which see above). The estate wide services are charged equally and the basis of charge for other services is the floor area of the Flat in relation to the total floor area for all properties within the relevant service charge schedules. The Tribunal finds that this is a fair and reasonable way of charging for the services.
52. Finally, the Applicant questions whether the charges are reasonable. The Tribunal has no evidence sufficient to establish that the charges made by Moat were in general or in specific instances unreasonable. However, the Applicants specifically raise the matter of the proposed redecorations in 2017-2018. They say that they were unable to pinpoint the works and whether a due process was followed in selecting contractors.
53. The annual service charge statement for 2017-2018, sent to residents by Moat with a covering letter dated 25 September 2018, noted that
“The 2017/2018 Budget has been increased to include a fund to cover the expenditure to undertake improvements to the Communal areas of One Brighton such as internal decoration, as well as renewal/repair within these areas where required.”
54. The earlier budget for that year, which SHW sent to Moat with a covering letter dated 30 March 2017 had stated that the decoration work would be undertaken in the year 2017-2018 and that a full Landlord and Tenant Act 1985, section 20 consultation would be carried out in April 2017 when a full tender exercise would take place.

55. It seems tolerably clear that this never came to fruition because on 28 March 2018, SHW sent the budget for 2018-2019 to Moat and in its covering letter stated that

“As previously advised the Board of Directors have agreed to carry out internal redecorations this year in 2018- 2019.”

It is not clear when the previous advice referred to was given but it seems reasonable to infer that the redecoration project had been deferred to 2018-2019. In addition a further figure of £28,500 had been budgeted for in 2018-2019 for internal lighting replacement.

56. The covering letter of 28 March 2018 from SHW to Moat stated that this work was part of the internal major works decoration project. It said that a full tender exercise would take place in April 2018 and that Moat would be fully consulted to comply with legislation under the Landlord & Tenant Act 1985, Section 20.

The letter also stated “Last year a first stage Section 20 notice was issued in regard to the internal redecorations however an amended notice is due to be issued shortly to include the common way lighting which needs to be replaced at the same time as it is felt that the current fixtures are not economical to replace and run.”

57. The Tribunal has no evidence with regard to any section 20 consultation or tender processes. Nor does it have any evidence of Moat having cascaded any consultation process to its own leaseholders, where section 20 is applicable. Thus this Application is not at the stage of a dispute about section 20 compliance, or the cost of works carried out. Indeed it has been held by the Upper Tribunal (Lands Chamber) that the limitation on recoverable costs provided by section 20 of the Landlord and Tenant Act 1985 does not apply in respect of payments for works to be carried out in the future and only applies at the stage when the works are to be done (*23 Dollis Avenue (1998) Limited v Nikan Vejdani, Nahideh Echrighi* [2016] UKUT 0365).

58. The redecoration/electrical work had clearly not been done by 26 September 2019 when Moat sent residents, including the Applicants, their final service charge statement for 2018-2019. It therefore seems likely that the budgeted sums remain in the service charge account managed by SHW. Indeed the Respondents have referred to them as reserve fund contributions, as to which see below.

59. The issue thus becomes one of whether the advance payments in respect of the proposed decoration/electrical works were payable and reasonable at that stage. Section 19(2) of the Landlord and Tenant Act 1985 provides that

“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 adjustments

shall be made by repayment, reduction or subsequent charges or otherwise.”

60. The Superior Lease allows for a reserve fund. Paragraph 12 of Part D of the Sixth Schedule to the Superior Lease provides that the maintenance expenses include

“Such sum as shall be considered necessary and proportionate by the Management Companyto provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the maintained property (save for any part or parts thereof which are specifically addressed in Part B of this Sixth Schedule).”

61. A “reserve fund” is a fund created for the purposes of spreading certain costs across the life of the lease to prevent penalising leaseholders who happen to be in occupation when items of major expenditure are incurred. The Association of Residential Managing Agents has published *A Guide to the Management of Mixed Tenure Developments*. Section 4.2 of that Guide provides:

“Best practice for both housing associations and managing agents is to set up reserve funds on new developments. However there are considerations of the affordability of service charges for first-time buyers and the burdens on developers. A life cycle costing of the development as built should be available to indicate the expected replacement date for components and the recommended redecoration intervals.”

Similar Guidance on sinking funds is given in the Service Charge Residential Management Code of Practice (3rd edition) published in 2016 by the RICS.

62. The evidence provided by the parties includes the certified accounts for 2017-2018. These show that SHW has set up a number of reserve funds as follows (in the case of Pullman Haul) to cover the costs of large, non regular repair and maintenance work.

1. A general reserve fund for estate costs.

2. A general reserve fund for Pullman Haul internal costs. At 31 March 2018 it contained £63,436.21 including the £58,500 allocation for that year.

3. A lift reserve for Pullman Haul internal, which contained £11,000 at 31 March 2018.

4. A general reserve for Pullman Haul internal, which contained £12,967.88 at 31 March 2018.

63. The RICS Guidance also recommends that a reserve fund should reflect “a costed, long-term maintenance plan that reflects stock condition information and projected income streams. This should be made available to all leaseholders on request and any potential purchaser upon resale.” There is no evidence that such a maintenance plan exists at One Brighton and much to suggest that maintenance, including items of major expenditure, is carried out on an *ad hoc* basis.
64. It can be seen that the reserve fund for Pullman Haul internal costs has not been built up gradually. It consisted of £63,436.21 of which £58,500 had been demanded in 2017-2018, SHW having told Moat in March 2017 that internal decoration would be necessary in the coming year. Similarly the following year a further “reserve fund” sum of £28,500.00 for electrical works was demanded and recharged.
65. The Applicants were personally charged £1,080.16 in respect of the prospective decorating charge in 2017-2018 and £513.46 in respect of the prospective electrical works charged in 2018-2019. It follows that although described as reserve fund contributions these sums were for major works anticipated in the near future for which sufficient funds would not otherwise be available from the reserve fund. This would seem to be because, as noted above, the reserve fund does not appear to be based upon a costed, long-term maintenance plan.

Decision

66. **The Tribunal does not have evidence sufficient to establish that it was unreasonable for SHW or Moat to budget for these imminent decorative and electrical repair costs which SHW considered to be necessary at the time, lamentable though it is that a sufficient reserve fund for the same had not been hitherto accumulated by SHW. It would however be wrong to characterise these payments as reserve fund contributions by Moat or the leaseholders, because the work has obviously not been planned in accordance with a settled properly funded programme of planned maintenance. They are simply advance payments for anticipated imminent costs, which the Management Company had decided it was necessary to incur.**
67. **However, the Tribunal is concerned that these payments were demanded from leaseholders in September 2018 and September 2019 despite having been planned as early as March 2017 and March 2018 respectively and with no apparent progress, including consultation procedures, having taken place. Whilst it was lawful for Moat to make the demands, it is clearly in the interest of good landlord and tenant relations for the Applicants and other residents to be informed of why this has not happened and what they can expect by way of progress including consultation.**

- 68. The Tribunal's decision is of course without prejudice to whether the works when carried out will prove to be reasonably incurred and the costs thereof reasonable in amount. It is at that stage that the applicability of section 20 would become relevant. As noted above, the present Application and decision thereon simply concerns the reasonableness of the advance payments.**
- 69. The Tribunal is satisfied that the water charges in 2018-2019 were properly incurred and charged. However, the mapping of SHW charges onto Moat's coding system means that there is scope for confusion, as evidenced above, thereby highlighting the need for full explanation in covering letters and accompanying documentation as to how the sums in question were arrived at.**

RIGHTS OF APPEAL

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, that 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.

Annex: The Law

Landlord and Tenant Act 1985

Section 18(1) defines a “service charge” as:

“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.”

Section 19(1), provides that:

“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”.

Section 19(2) provides that

“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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.”

“Relevant costs” are defined for these purposes by **section 18(2)** of the 1985 Act as “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.