FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UD/LSC/2022/0029
Property	:	12 Eastcroft Court, 14 Albury Road, Guildford, GU1 2BU
Applicant	:	Alastair Richardson
Representative	:	
Respondent	:	Eastcroft (Guildford) Management Limited
Representative	:	Richard Stanhope, Director
Type of Application	:	For the determination of the reasonableness of and the liability to pay a service charge section 27A of the Landlord and Tenant Act 1985
Tribunal Members	:	Judge Tildesley OBE Tat Wong
Date and venue of Hearing	:	25 August 2022 at Havant Justice Centre Further documents supplied on 14 September 2022
Date of Decision	:	20 October 2022

DECISION

Decisions of the tribunal

(1) The Tribunal determines that the Applicant is liable to pay the interim charges for the period April 2019 to 24 December 2020 in the sum of £2,856 which represented the total sum demanded in the seven quarterly demands issued by the Respondent.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

The Application

1. The Applicant originally sought 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 the Applicant in respect of the service charge year 2020 to 2021. .

2. The Applicant also made applications under section 20C of the Landlord and Tenant Act 1985, and paragraph 5A to schedule 11 of the Commonhold and Reform Act 2020 preventing the landlord from recovering its costs in relation to these proceedings from the service charges.

3. The Applicant is the leaseholder of 12 Eastcroft Court, 14 Albury Road, Guildford GU1 2BU ("the Property) which is demised by a lease dated 27 September 1989 ("the Lease") made between (1) John Mowlem Homes Limited and (2) Simon Phillip Thomas and Susan Katherine Thomas and (3) Eastcroft (Guildford) Management Limited for a term of 125 years from 24 September 1988.

4. The Respondent is the freeholder of Eastcroft Court. The Respondent is a company limited by shares. The Capital of the company is £150 divided into 15 Ordinary Shares of £10 each. Therefore, each flat owns the same percentage share of the freehold and each flat pays the same service charge. Each flat owns a single voting share in the Respondent making it owner owned and managed. This corporate structure dates from 1988 and is not a Right to Manage arrangement.

5. Eastcroft Court is a purpose-built estate of 15 flats divided between two blocks. The frontage faces Albury Road, there is dedicated parking to the northern side and a communal garden at the rear. The Property is a ground and first floor (duplex) flat in the smaller block of five flats.

6. On 19 May 2022 the Tribunal directed the Applicant to provide additional and better particulars which he did on 2 June 2022. The Tribunal also directed that the case appeared suitable to be determined on the papers and set out the timetable for the exchange of statements

of case. On 13 June 2022 the Respondent applied to the Tribunal to restrict the Applicant's case to those issues set out in its initial application and to make other case management decisions which were objected to by the Applicant.

7. On 17 June 2022 the Tribunal issued further directions. The Tribunal accepted that the issues raised by the Applicant were more extensive than originally considered when the Tribunal's directions of 19 May 2022 were prepared. The Tribunal decided that the challenges were those however that a competent management company should be ready to meet without undue difficulty. The Tribunal added that it had no powers to make an injunction, temporary or otherwise. The Tribunal also made clear that the only matters the Tribunal would determine was whether the service charges demanded complied with the terms of the lease and with statute. Further the management of the company was not a matter for the Tribunal and would not be considered. Finally the Tribunal indicated that ordering refunds to the service charge and for the Applicant's legal expenses would not be met as being outside the Tribunal's jurisdiction.

8. On 18 June 2022 the Applicant raised various questions on the directions to which the Tribunal responded by letter dated 21 June 2022. On 30 June 2022 the Tribunal issued further directions which principally concerned the provision of hearing bundle.

9. On 29 July 2022 the Applicant requested directions on (1) the Respondent's case format, (2) the admissibility of the Respondent's evidence, (3) the Respondent's statement of Truth, and (4) The Respondent's representative. The Respondent replied to the application on 3 August 2022 which generated a further submission from the Applicant. On 8 August 2022 the Tribunal noted that the parties had failed to co-operate sufficiently to produce a bundle as directed. The Tribunal informed the parties that it was not a forum for procedural crossfire between the parties nor did it have limitless resources to devote case management officers and procedural judges to one case. The Tribunal directed each party to deliver to the Tribunal their own bundle of documents and that the case would be listed for an in-person hearing on 25 August 2022 at Havant Justice Centre.

10. On 12 August 2022 the Respondent applied to vacate the hearing which was refused by the Tribunal.

11. The Applicant attended the hearing in person on 25 August 2022, and was accompanied by Ms Gabriella Richardson. Mr Richard Stanhope, a director represented the Respondent, and was accompanied by Mr Ford of Clark, Gammon Estates, the managing agent. The Applicant supplied a hearing bundle of 803 pages. The Respondent's bundle numbered 112 pages. At the end of the hearing the Tribunal directed the Respondent

to produce further documents which with the Applicant's reply numbered 82 pages.

The Dispute

12. The Applicant alleged that over the past three years, it has become clear that the Respondent has misappropriated service charge funds, failed to comply with the terms of the lease and statute, while attempting to hide its failures through a lack of transparency leading to this action.

13. The Respondent stated that during the period from 1988 until 2019 the Respondent had received no written complaints from owners or residents. The Respondent pointed out that following the purchase of his property the Applicant has made 30 complaints against it which the Respondent have answered in writing all but one of the complaints. Further the Respondent said that the Applicant has made at least two accusations against it and/or its directors involving Surrey Police, a complaint to the Data Protection Registrar, complaints concerning the Respondent's managing agent, Clarke Gammon Estates, through the Property Redress Scheme and a complaint to the professional regulator of one director (Institution of Fire Engineers).

14. The Respondent said that the Applicant had now made five Applications to the FTT against it and its Directors, of which this current application was one. Three involved alleged breaches of covenants against other leaseholders which were struck out by the Tribunal. The other one concerned an Application for a Tribunal appointed manager which did not proceed because the Applicant's proposed managers either did not comply with the directions or did not meet the Tribunal's requirements expected of a manager.

15. The Respondent brought proceedings against the Applicant for breaches of covenant of his lease which related to structural and non-structural works to the demised premises and to the installation of new flooring pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002. The Tribunal heard the application on 27 October 2021. The Applicant admitted various breaches of clause 3(5) of the lease which prevented the Applicant from making any alterations or additions to the Demised premises without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessor and secondly having received the written consent of the Lessor thereto[1].

16. The Tribunal that heard the application on 27 October 2021 was surprised that in the light of the Applicant's admissions and limited

[1] See Tribunal Case reference CHI/43UD/LBC/2021/0006

nature of the remaining issues the parties did not simply enter into a consent order making a determination in relation to the breaches of covenant which were admitted. However, the parties did not reach agreement. Instead, the Respondent chose to pursue matters to a Tribunal hearing. The Tribunal found that the additional matters added very little to the breaches which had already been admitted and decided that they did not constitute breaches of clause 3.5 of the lease. The Respondent applied for an unreasonable costs order under rule 13 (1)(b) of the Tribunal Rules 2013 against the Applicant which the Tribunal refused. The Tribunal commented that Clause 3(7) of the Lease may give the Respondent a right to recover costs under contract from the Applicant but had nothing to do with rule 13 (1)(b).

17. On 5 May 2022 the Respondent sent the Applicant a letter before action in respect of its costs incurred in the proceedings for breach of covenant. The amount claimed was in the sum of £13,905.60. The Respondent has not yet issued proceedings in the County Court for recovery of that sum.

18. The Respondent has not demanded service charges from the Applicant since it received the report from the surveyor about the unauthorised works on the Applicant's flat. The Respondent had taken this course so it would not jeopardise potential proceedings for forfeiture of the Applicant's flat.

19. The Applicant purchased the property on 5 April 2019. The Respondent has issued seven quarterly demands of service charges in the sum of £2,856 for the April 2019 to 24 December 2020 which the Applicant has paid. The Applicant has made six unsolicited payments of £408 each totalling £2,448 since the 4 January 2021.

20. The Applicant in his statement of case sought to expand the dispute regarding service charges back to 2013. The Applicant also made claims of money on behalf of all leaseholders past and present. The Applicant confirmed that no other leaseholder on the Estate had joined him in his Application.

21. The Tribunal explained to the Applicant the extent of its jurisdiction under section 27A and effectively it was determining the Applicant's liability to pay service charges. The amount in dispute is £2,856 which spanned the financial years of 2019/2020, and 2020/2021. The Tribunal decided to limit its deliberation to the service charges payable by the Applicant in those two years. The Applicant argued that the Tribunal directions of 17 June 2022 gave him permission to expand his dispute from that identified in his Application which was limited to the year 2020/2021. The Tribunal disagreed with the Applicant's interpretation. The directions did not give him permission to involve other leaseholders without their consent or deal with periods for which he had no liability to pay. The Tribunal did not consider that the

payment of the charges by the Applicant constituted an admission of liability.

22. The Applicant identified 14 specific issues in dispute. The Tribunal intends to deal with each in turn. Before doing so it sets out the relevant provisions of the lease.

23. Under Sub clause 4(4) the Tenant covenants with the Lessor and with the Manager to pay the Interim Charge and the Service Charge in the manner and times provided in the Fifth Schedule and to pay the Insurance Premium all such premium and Charges to be recoverable in default as rent in arrear.

24. THE FIFTH SCHEDULE entitled THE SERVICE CHARGE provides as follows

> 1. The first payment of the Interim Charge (on account of the Service Charge for the Accounting Period during which this Lease is executed) shall be made - on demand and thereafter the Interim Charge shall be paid to the Manager by equal payments in advance on the Twenty-fifth day of March and the Twenty-ninth day of September in each year and in case of default the same shall be ' recoverable from the Tenant as rent in arrear
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> 2. If the interim Charge paid by the Tenant in respect of any accounting Period exceeds the Service Charge for that period the surplus of the interim Charge so paid over and above the Service Charge shall be carried forward and credited to the account of the Tenant in computing the Service Charge in any succeeding Accounting Periods as hereinafter provide.
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> 3. If the Service Charge in respect of any Accounting Period exceeds the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus from previous years carried forward as aforesaid then the Tenant shall pay the excess as aforesaid within twenty eight days of service upon the Tenant of the Certificate referred to in the following paragraphs and in case of default the same shall be recoverable from the Tenant as rent in arrear.
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> 4. As soon as practicable after the expiration of each Accounting Period there shall be served upon the Tenant by the Manager a certificate containing the following information:
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> > (a) The amount of the Total expenditure for that Accounting Period;

(b) The amount of the interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus carried forward from the previous Accounting Period;

(c) The amount of the Service Charge in respect of that Accounting Period and of any excess or deficiency of the Service Charge over or under the Interim Charge.

5. The said certificate shall be conclusive and binding on the parties hereto but the Tenant shall be entitled at his own expense and upon prior payment of any costs to be incurred by the Manager at any time within one month after service of such certificate to inspect the receipts and vouchers relating to payments of the Total expenditure**.**

25. Clause 1 of the Lease contains definitions of which the following are relevant in respect of liability to pay service charge:

(f) “Total Expenditure“ means the total expenditure incurred by the Manager in any Accounting Period in carrying out its obligations under Clause 7 of this Lease (except the insurance Premium) and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing the costs and expenses of (a) administration and running of the Manager (b) any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder and (c) creating such reasonable reserves against future liabilities as the Manager in its absolute discretion may deem prudent or desirable.

(g) "the Service Charge" means such percentage of Total expenditure as is specified in the Particulars or (in respect of the Accounting Period during which this Lease is executed) such proportion of such percentage as is attributable to the period from the date hereof to the twenty-ninth day of September next following

(h) “the Interim Charge“ means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the as the Manager shall specify at its discretion to be fair and reasonable payment.

(i) the insurance Premium" means such part of the premium or premiums payable by the Manager in respect of the policy or policies of insurance which it is required to maintain pursuant to the obligations contained in Clause 7 (i) hereof as are referable

to the cover afforded by such policy or policies in respect of the Demised Premises as opposed to the Building as a whole provided that such part or parts of any such premium or premiums as are not referable to the Demised Premises as aforesaid or to any other premises comprised in the Building let to the Flat Owners shall form part of the Total Expenditure and a due proportion thereof be recoverable from the Tenant as part of the Service Charge as herein otherwise provided

(j) "the Accounting Period" shall mean a period commencing on the thirtieth day of September in any year and ending on the twenty-ninth day of September in the year following

26. The obligations specified in Clause 7, Expenditure of Service Charge, as relevant to the Application are as follows:

27. **To maintain Building** (a) To maintain and keep in good and substantial repair and condition:

(i) the main structure of the Building including the principal beams timbers and supporting walls and the exterior walls and the foundations and the roof thereof with its conducting media (other than those included in this demise or in the demise of any other premises in the Building)

(ii) all such conducting media as may by virtue of the terms of this Lease be enjoyed or used by the Tenant in common with the Flat owners

(iii) subject to Clause 5B hereof the Common Parts

(iv) any boundary walls and fences belonging to the Building

(v) all other parts of the Building not included in the foregoing sub-paragraphs (i) to (iv) and not included in the Demised Premises or the demise of any other premises or part of the Building including any lift motors shafts and related apparatus.

28. **To decorate** (b) As and when the Manager shall deem necessary but not less often than every fifth year of the Term

(i) to paint varnish stain or treat the whole of the outside wood and ironwork and other fabric of the Building heretofore or usually so treated

(ii) to paint varnish colour grain and whitewash such of the interior parts of the Building heretofore or usually so treated

(other than those parts which are included in the Demised Premises or in the demise of any other premises in the Building).

29. **To clean etc** (d) To keep clean and where appropriate lighted the Common Parts including the windows thereof and where appropriate to furnish the Common Parts in such style and manner as the Manager shall from time to time reasonably think fit.

30. **To employ caretakers etc** (f) For the purpose of performing the covenants of the Manager herein contained at its discretion to employ or cause to be employed on such terms and conditions as the Manager shall reasonably think fit one or more caretakers porters maintenance staff gardeners cleaners or such other persons as the Manager may from time to time reasonably consider necessary.

31. **To employ builders etc** (g) To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the building.

32. **Generally** (i) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as the Manager may reasonably consider necessary or advisable for the proper maintenance safety amenity and administration of the Building.

33. **To create reserves** (j) To set aside (which setting aside shall be deemed a legitimate and recoverable item of expenditure incurred by the Manager) such sums of money as the Manager shall reasonably require to meet such future costs as the Manager shall reasonably expect to incur in replacing maintaining and renewing those items which the Manager has hereby covenanted to replace maintain or renew.

The Issues

Failure to Comply with section 22 of the Landlord and Tenant Act 1985

34. **This is not a matter within the Tribunal's jurisdiction**.

Demands for Service Charges not compliant with statutory requirements

35. The Applicant stated that the four service charge demands issued in 2019 had the old address for the Respondent rather than the new one of 4A Quarry Street, Guildford GU1 3TY. The Applicant asserted that the Respondent's practice of issuing demands every quarter and using the

financial year as the accounting period for service charges did not comply with the terms of the lease. Finally the Applicant pointed to the fact that the Respondent had not issued a Certificate at the end of the service charge year setting out the total expenditure incurred during that year, and any excess or deficiency of the service charge over or under the Interim Charge.

36. The Respondent accepted that its process for demanding service charges did not comply with the lease. The Respondent explained that it had invoiced the service charge quarterly in a cycle conforming with its financial year as a company since its inception in July 1991. The Respondent produced a witness statement from Ms Fiona M Wylie who had owned Flat 14 since February 1991 and stated that she was present at the first AGM of the Respondent when the members elected to make quarterly rather than biannual service charges payments. The Respondent supplied a copy of the estimated budget for the year ended 31 March 1992 which indicated that the service charges would be paid in advance on a quarterly basis. The Respondent acknowledged that it had not issued a Certificate at the end of each service charge year. The Respondent pointed out that the service charge accounts were reviewed and discussed at each AGM.

37. The Respondent stated that these arrangements had been in place for 30 years without objection and were designed to reduce the financial burden on leaseholders. Following the Applicant's objection the Respondent had written to all leaseholders on 4 July 2022 stating that it would be introducing biannual service charge demands and issuing a Certificate at the end of each service charge year.

38. The Respondent stated that in February 2019 it had changed its registered address from 1st Floor Wonesh House, Old Portsmouth Road, Guildford, Surrey GU3 1LR to 4A Quarry Street, Guildford, Surrey UL GU1 3TY which was the address of its Managing Agent, Clarke Gammon Estates. The Respondent said it was a genuine oversight on its part that it had not put the new address on the demands straightaway.

39. The question for the Tribunal is what is the effect of the Respondent's failure to follow strictly the requirements in the lease on the Applicant's liability to pay the service charges. In this respect it is instructive to refer to The Court of Appeal decision in *Leonora Investment Co Ltd v Mott MacDonald Ltd* [2008] EWCA Civ 857 which explained the approach that a Tribunal should adopt when a question arises whether a Landlord is obliged to comply fully and strictly with the steps specified in the lease before a Tenant has any liability to pay. At paragraph 14 Tuckey LJ said this

> "The skeleton arguments referred to a number of cases in which the courts have had to consider whether terms in a lease are conditions precedent to obligations to pay, substantive

> procedural provisions which have to be followed to the letter before a liability to pay is triggered, or mere mechanics which do not have to be insisted upon regardless of the circumstances. I have not found these cases particularly helpful for the simple reason that we are only concerned with an issue of construction, the rules of which are not in doubt. The leases in this case must be construed in accordance with their own terms."

40. The Court of Appeal also took the view that where a mistake had happened it was usually open to the Landlord to trigger the service charge machinery a second time.

41. In this case the Tribunal is concerned with the seven demands for service charges covering the period from April 2019 to 24 December 2020. The demands were for interim service charges of equal amount in the sum of £408. Under Clause 4(4) of the lease the Tenant covenants to pay an interim service charge in accordance with the Fifth Schedule which requires payment on demand by equal payments in advance on the 25 day of March and the 29 day of September. Clause 1(h) defines interim charge "as such sum to be paid on account of the Service Charge in respect of each accounting period as the Manager shall specify at its discretion to be fair and reasonable interim payment".

42. The Tribunal finds that the lease authorises the Respondent to demand payments on account of the service charge by way of an interim charge in equal amounts. This is what the Respondent did in respect of the service charges covering the period from April 2019 to 24 December 2020. The Tribunal is satisfied that the Respondent's failure to issue a Certificate at the end of the accounting period for service charges was not a condition precedent to trigger the Tenant's liability to pay the interim charge. The Tribunal considers the Respondent's decision to issue quarterly demands did not contravene the requirements of paragraph 1 of the Fifth schedule. In the Tribunal's view, the phrase "shall be paid to the Manager by equal payments in advance on the Twenty-fifth day of March and the Twenty-ninth day of September in each year" refers to when the payments should be made not to the frequency of the demands. The Tribunal considers that it would have been open to the Applicant to pay the quarterly demands every six months. The Applicant chose not to do so and paid the quarterly demands of his own volition.

43. The Tribunal finds that the demands covering the period April 2019 to March 2020 cited the incorrect address for the landlord, and did not strictly comply with the obligations under section 47(1) of the Landlord and Tenant Act 1987. The Tribunal, however, is satisfied that the Respondent has subsequently informed the Applicant of the correct address, and has rectified the error in accordance with section 47(2) of the Landlord and Tenant Act 1987.

44. **The Tribunal, therefore, decides that the Applicant is liable to pay the interim charges for the period April 2019 to 24 December 2020 in the sum of £2,856 which represented the total sum demanded in the seven quarterly demands issued by the Respondent.**

45. The Tribunal notes that the Respondent intends to review its practices to ensure full compliance with the terms of the lease. The Tribunal commends the Respondent's proposed course of action.

Landlord's Breach of Trust in respect of its Legal Action against Flat 12

46. The Applicant in his statement of case makes wide ranging allegations that the Respondent had committed breaches of trust in respect of the holding and spending of service charge monies. The Tribunal has no jurisdiction to determine whether the Respondent was in breach of trust. The Tribunal has confined its deliberation in this section on whether the Respondent had authority under the lease to charge the costs of the legal action against the Applicant for breach of covenant against the service charge account. The Tribunal refers to paragraphs 15-17 of this decision which provides more detail of this legal action. The Applicant also raised the issue of charging company expenditure against the service charge account which is dealt with elsewhere in this decision.

47. The Respondent admitted that money collected as service charge had been spent on the following costs incurred in the proceedings for breach of covenant against the Applicant, namely £4,296.00 (surveyors fees), £7167.60 (solicitor's fees) and £2,442.00 (administration costs).

48. The Respondent's justification for charging the costs to the service charge account was that the Applicant's unauthorised works at Flat 12 had been shown in the survey report by Vail Williams to be a safety risk to the building. According to the Respondent, the building regulations relating to fire safety were not followed, the replacement of a staircase and the removal of wall compromised the structural integrity of the building, and the affixing of the Applicant's consumer unit in a communal cupboard constituted a fire risk to the Applicant and the other residents on the Estate.

49. The Respondent contended that such expenditure was authorised under the lease as service charge by virtue of subclauses 7(g) and 7(i) namely:

> "7(g)To employ builders etc: To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building.

> 7(i) Generally: Without prejudice to the foregoing to do or to cause to be done all such works installations acts matters and things as the Manager may reasonably consider necessary or advisable for the proper maintenance safety amenity and administration of the Building".

50. The Applicant contended that the Lease was a contract between the Lessor and the Tenant. Therefore, any expenditure to enforce the lease was an expense by the Lessor. The Applicant pointed out that the Manager had no right to enforce any terms of the lease under Clause 7. According to the Applicant, the Respondent confirmed that the action taken was in relation to a breach of Lease. The Applicant submitted that only the Lessor could take such action and that under the lease the Lessor did not have the authority to recover the costs of the legal action through the service charge funds.

51. The Tribunal considers that the Applicant's contentions have force. Although the Respondent is both the Lessor and the Manager, those roles have distinct responsibilities and liabilities under the lease, and there are separate covenants between the Tenant and the Lessor, and between the Tenant and the Manager. The Tenant's covenant of no alterations without consent under clause 3.5 is with the Lessor and not with the Manager. The Tribunal considers that the Applicant's construction of the lease is correct and that the only the Lessor can take action against the Tenant for breach of clause 3.5. The Respondent's right to recover costs for breaches of lease as Lessor is under clause 3.7 provided the action taken is in contemplation of proceedings under section 146 and 147 of the Law of Property Act 1925 and not under Clause 7 which deals with the costs incurred by the Manager in respect of its covenants with the Tenant. The Tribunal is satisfied that the Manager has no authority under the lease to incur costs for proceedings taken in connection with breaches of covenant owed by the Tenant to the Respondent in its capacity as a Lessor.

52. **The Tribunal determines that the costs incurred by the Respondent in legal action against the Applicant for breach of covenant are not recoverable under the lease through the service charge**. The Respondent has a contractual right under clause 3.7 to recover the costs direct from the Applicant. It may also be that the Respondent can recover the legal costs as a call against the shareholders but that is a matter upon which the Respondent should take independent advice.

53. The Applicant requested the Tribunal to require the Respondent to put the other leaseholders at Eastcroft Court in the position as if "the breach of trust" had not occurred by restoring the value lost by the breach and or making good financial damage caused by the breach. As explained previously the Tribunal has no jurisdiction to decide whether a breach of trust has occurred, and has no power to make the order

requested by the Applicant. The Tribunal points out that the Applicant has no authority to speak for other leaseholders.

Using the Reserve Fund as a Float rather than using a Balancing Charge

54. The Applicant carried out an analysis of the service charges accounts for the period 2013/14 to 2020/21 in which he purported to show that year end balances of service charge income in excess of service charge had been applied to a reserve fund. The Applicant identified that the accounts had no line for reserves which suggested to him that contingency funds were being used as balancing mechanism because no surplus or deficit had been returned to leaseholder or demanded over the nine years of accounts.

55. The Applicant referred to sub clause 7(i) of the lease which he said authorised the setting aside of sums of money as reserves to meet specific items of future expenditure. The Applicant maintained that in order to comply with the lease the Respondent should either demand a sum in advance specifically allocated to reserves or give notice to the leaseholders that sums allocated to reserves were being used for specific items of expenditure.

56. The Applicant requested that the Tribunal order the Respondent to return all surplus service charge monies to leaseholders and only use the reserves for the purposes in the lease.

57. The Respondent accepted that it had held a reserve fund of approximately £50,000.00 for a considerable number of years. The Respondent stated that the total held in reserve had fluctuated over the years but had remained at approximately at £50,000.00 for each year. The Respondent asserted that it was entitled to hold reserves under the lease, and that monies from the reserves were expended on specific expenditure items which were not normal annual expense. The Respondent said that its approach in respect of holding of reserves had been discussed and agreed at each of its Annual General Meetings.

58. The Tribunal finds that Respondent is entitled to set aside sums of monies under the service charge as reserves for future expenditure. The evidence suggests that is what the Respondent was doing. The problem is not with the reserves but with the Respondent's failures to issue a Certificate of service charge income and expenditure at the end of the accounting year and to make the relevant balancing adjustments. The Tribunal understands that the Respondent has now agreed to start issuing Certificates at the end of the accounting year.

59. **The Tribunal is not convinced on the evidence that the Respondent has misapplied funds allocated to reserves. The Tribunal, in any event, does not have to the power to make the Order of returning surpluses of service charges to leaseholders.**

Lessor's Accounts not Chargeable to the Lease

60. The Applicant challenged whether the costs of the Respondent's accountant for preparing the company accounts were recoverable as service charges. The Applicant referred specifically to two invoices of A J Bennewith & Co in the suns of £624 (31 May 2019) and £636 (14 May 2020). The Applicant also questioned whether the service charge accounts produced complied with the terms of the lease.

61. The Respondent accepted that costs incurred directly connected with its role as a company were not chargeable to the service charge account. The Respondent pointed out that these costs were small, approximately £500 per year, and comprised the annual filing fee, other Companies House fees, the directors' insurance and the company accounts. The Respondent stated that it would henceforth not charge these costs to the service charge fund and would instead raise separate funds for these expenses. The Respondent proposed that this would be achieved through the collection of Ground Rent from those flats where this was applicable and charging for leasehold extensions. The Respondent also pointed out that the Articles of Association allowed for a call upon its members (shareholders) for a proportion of the company's costs in carrying out its duties. The Respondent also stated that it had set up a separate bank account for the company's monies.

62. **The Tribunal records the Respondent's admission that costs incurred on performing its functions as a company should not be charged to the service charge account. The Tribunal has no power to Order the Respondent to reimburse the service charge fund for non-allowable costs.**

Building Insurance non-compliant with the Lease

63. The Applicant stated that under the lease the costs of insurance did not form part of the total expenditure as defined by clause 1(f) of the lease, and, therefore, costs of insurance should not have been included in the demand for service charges. The Applicant asserted that there had been no valid demand for insurance, and that all monies paid by leaseholders for insurance should be returned to them. The Applicant also contended that the provision of insurance services constituted a qualifying long term agreement (QLTA), and that the costs for individual leaseholders should be capped at £100 because of the Respondent's failure to consult on the QLTA.

64. The Respondent accepted that it had been demanding the costs of the building insurance as part of the interim service charge for the last 20 years. The Respondent maintained that by doing so it was complying with the terms of the lease.

65. The Tribunal refers to the following clauses of the lease in so far as is relevant:

> "Clause 1(f) Total Expenditure" means the total expenditure incurred by the Manager in any Accounting Period in carrying out its obligations under Clause 7 of this Lease (except the insurance Premium)".
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> "Clause 1(i) "the Insurance Premium" means such part of the premium or premiums payable by the Manager in respect of the policy or policies of insurance which it is required to maintain pursuant to the obligations contained in Clause 7 (i) hereof as are referable to the cover afforded by such policy or policies in respect of the Demised Premises as opposed to the Building as a whole provided that such part or parts of any such premium or premiums as are not referable to the Demised Premises as aforesaid or to any other premises comprised in the Building let to the Flat Owners shall form part of the Total Expenditure and a due proportion thereof be recoverable from the Tenant as part of the Service Charge as herein otherwise provided".
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> "Clause 7(c)To insure and keep insured the Building including the Demised, Premises (unless such insurance shall be vitiated by any act or default of the Tenant or the Flat Owners or any person claiming through them or their servants agents licensees or visitors) against loss or damage by fire explosion storm tempest earthquake aircraft and such other risks (if any) as the Lessor thinks fit in some insurance Office of repute in the full reinstatement value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof and to insure the fixtures and fittings plant and machinery of the Lessor against such risks as are usually covered by a Flat Owners" Comprehensive Policy and to insure against third party claims made against the Lessor and the Manager in respect of management of the Building and whenever reasonably required to do so to produce to the Lessor or the Tenant such policy or policies and the receipt for the last premiums for the same and in the event of the Building including the Demised Premises or any part thereof being damaged or destroyed by fire or other insured risks as soon as reasonably practicable to lay out the insurance moneys in the repair rebuilding or reinstatement of the premises so damaged or destroyed subject to the Lessor at all times being able to obtain all necessary licences consents and permissions from all relevant authorities in this respect…."
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> "Clause 7(i) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as the Manager may reasonably consider necessary or advisable for the

proper maintenance safety amenity and administration of the Building".

66. The Tribunal disagrees with the Applicant's construction of the lease in respect of insurance. The phrase "the Insurance Premium" has a specific meaning as set out in Clause 1(i). Primarily it does not apply to the premium paid in respect of the insurance which the Manager is obliged to take out under its covenant under clause 7(c). The phrase "the Insurance Premium" is confined to the situation where the Manager takes out insurance to cover a risk for an additional expenditure item authorised under clause 7(i). Further if additional insurance is taken out it is only that part of the premium that relates to the Demised Premises exclusively which does not rank as Total expenditure.

67. **The Tribunal is satisfied that the costs of insurance incurred by the Respondent in meeting its insuring obligations under clause 7(c) formed part of Total Expenditure and can be demanded as part of the Interim Charge.** The Tribunal adds that even if the Applicant was correct in his construction of the Insurance Premium there was no requirement under the lease for separate demands for the interim charge and the insurance premium. Finally the Tribunal finds that the Applicant has not adduced evidence to substantiate his assertion that the insurance was the subject of a qualifying long term agreement.

Qualifying Long Term Agreement (QLTA) for Gardening

68. The Applicant supplied evidence of the amounts paid for gardening on the Estate from 2013/14 which were in the region of £2,500 per annum. The Applicant stated that the services had been provided by the same person either as a sole trader or as a sole director of a company. The Applicant contended that there was a QLTA in place for gardening services on which no consultation had been carried out by the Respondent with the leaseholders. The Applicant submitted that the Tribunal should cap the costs at £100 per leaseholder. According to the Applicant the provisions of section 20B of the 1985 Act applied to the majority of the costs incurred on gardening. The Applicant, therefore, stated that the costs were not valid under the terms of the lease and that the sum of £22,502 was not chargeable to the service charge fund for the period 2013 to 2021.

69. The Respondent explained that Mr Hughes had been engaged to do the gardening on the Estate since the 1990's. The Respondent said that Mr Hughes attended to the garden twice a week and his tasks involved mowing the lawn, trimming bushes and hedges and doing odd-jobs such as salting and clearing paths. The Respondent stated that the leaseholders were very pleased with the work done by Mr Hughes, and that during the years the Respondent had held discussions with him

about his tasks and charges. The Respondent said that Mr Hughes held public liability and employer's liability insurance. The Respondent supplied a copy of the certificate of insurance in the name of Mr Hughes trading as Beds (N) Borders for the year 28 October 2021 to 27 October 2022. The Respondent asserted that the requirements regarding QLTA did not apply to its arrangements with Mr Hughes because they commenced before 2003 when the legislation enacting QLTAs came into force. The Applicant disagreed with the Respondent's assertion because the gardening services were supplied in certain years by Mr Hughes' company rather than by Mr Hughes in his capacity as sole trader.

70. The Tribunal finds that the Respondent's arrangements with Mr Hughes was of a casual ad hoc nature which could be terminated at any time. The longevity of the arrangement was because the Respondent was very satisfied with the services supplied by Mr Hughes, and appreciated his willingness to carry out odd jobs on the Estate. The Tribunal suspects that the Respondent would have difficulty in finding another tradesperson who would be prepared to be as flexible as Mr Hughes. The Tribunal is not convinced on the evidence that the Respondent's arrangement with Mr Hughes constituted a QLTA within the meaning of section 20ZA(2) of the 1985 Act. The Applicant adduced no evidence to suggest that the charges were unreasonable. **The Tribunal decides that there was no requirement on the Respondent to consult leaseholders on the arrangements for gardening services,** and that the costs for those services were reasonable and payable by the Applicant.

Unreasonable Company Secretary and Managing Agent Charges

71. The Applicant supplied evidence of the annual costs of the managing agent for the years from 2013/14 to 2021/22. The costs were £3,288 for 2013/14 rising to £3,850 for 2021/22.

72. The Applicant objected to the costs on three grounds, namely, (1) they included the costs of acting as company secretary; (2) the services supplied by the managing agent were not of a reasonable standard; and (3) the agreement with the managing agent constituted a QLTA and there had been no consultation with leaseholders about the agreement.

73. The Tribunal accepts the evidence of Mr Ford, the managing agent, that the charges did not include a fee for acting as company secretary. Mr Ford said that there was no charge made for this service. The Tribunal finds that the Applicant had not substantiated his assertion that the services provided by the managing agent were below the expected standard. The managing agent at the moment was in a difficult position vis a vis his dealings with the Applicant because of the risk that it may compromise the Respondent's position in potential forfeiture proceedings against the Applicant.

74. The principal issue to decide under this heading is whether the Respondent's agreement with the managing agent was a QLTA. The underlying facts were agreed between the parties. There was no formal written agreement between the Respondent and the managing agent regarding the provision of services. Instead the selection of the managing agent took place at each AGM of the Respondent.

75. The Respondent in its statement of case explained the process:

> "As stated by the Applicant, the election of the managing agents takes place at each annual general meeting. All leaseholders are consulted as to their satisfaction with the agreement and have the opportunity to vote whether there in person or, if unable to attend, via proxy vote. All leaseholders have the opportunity to present an alternate proposition if they so wish. This process enables full leaseholder engagement with the appointment process. Through this mechanism, Clark Gammon Estates have been the choice of managing agents by the majority of those leaseholders choosing to vote over the past 11 years. The vote during the March 2021 AGM, deciding to continue with Clarke Gammon Estates as the managing agent, was 9 for and 1 against. The minutes of the 2021 AGM reflect that the Applicant had opposed the reappointment of Clark Gammon Estates as managing agents, but no counter proposal had been received from him by the Respondent".

76. The Applicant supplied details of the timings of the last four AGMs and the period between them:

AGM 2022 – 21st March 2022 – Time Since last AGM – 1 year 13 days.

AGM 2021 – 9th March 2021 – Time Since last AGM – 1 year 5 days.

AGM 2020 – 5th March 2020 – Time Since last AGM – 1 year 1 day.

AGM 2019 – 5th March 2019 – Time Since last AGM – 1 year 5 days. .

77. The Applicant argued that as the time between AGMs was greater than one year, the minimum time for the appointment of Clark Gammon Estates was more than one year which meant that it was a QLTA. According to the Applicant, it, therefore, followed that the costs for the managing agent should be capped at £100 for each leaseholder because there was no consultation with the leaseholders.

78. Section 20ZA(2) of the 1985 Act defines a QLTA as: "an agreement entered into, by or on behalf of the landlord or any superior landlord, for a term of more than twelve months".

79. The question for the Tribunal is whether the management services being provided by Clark Gammon Estates to the Respondent were

being provided under an agreement between the Respondent and Clark Gammon Estates for a term of more than twelve months.

80. HHJ Huskinson in *Bracken Hill Court at Ackworth Management Company Limited v Andrew Dobson and others* [2018] EWCA Civ 1102 after consideration of the relevant authorities said that the appropriate test for deciding "Whether the agreement is for a term exceeding 12 months is not about the substance of the management agreement and its various obligations. Rather it is about whether it is an agreement for a term that must exceed 12 months".

81. Turning to the facts of this case, the Tribunal considers that the agreement for management services between the Respondent and Clark Gammon Estates is not one that must exceed 12 months. The agreement between them is that the provision of management services is reviewed afresh annually at each AGM with a possibility that new managing agents may be appointed. The fact that periods between the last four AGMs have exceeded one year did not detract from the nature of agreement which was one for 12 months.

82. The Tribunal finds that the agreement between the Respondent and Clark Gammon Estates for the provision of management services was not a QLTA. T**he Tribunal decides that there was no requirement on the Respondent to consult leaseholders on the agreement for management services.**

83. The Applicant has adduced no evidence challenging the reasonableness of the charges for management services. The Tribunal is satisfied that the costs of the managing agent are reasonable and payable by the Applicant.

Unreasonable Fire Risk Assessments

84. The Applicant objected to the expenditure of fire risk assessments reports prepared by M A Sharman & Associates in the sum of £175 and dated 1 October 2019, and by John Sursham Associates in the sum of £350 dated 4 January 2021.

85. The Applicant said that Mr Sharman's report was unnecessary and misleading and that he had a conflict of interest because of his appointment as a director of the Respondent. The Applicant questioned various aspects of Mr Sharman's report.

86. The Applicant cited the same concerns with the report prepared by Mr Sursham. The Applicant alleged that Mr Sharman and Mr Sursham were known associates and that a copy of Mr Sharman's report was supplied to Mr Sursham in advance which according to the Applicant created a bias in his report.

87. The Applicant had commissioned his own fire risk assessment from John Convey MIFSM of Elite Fire dated 23 August 2021. The Applicant stated that the findings of this report contradicted the findings of the reports prepared by Mr Sharman and Mr Sursham. The Respondent questioned the qualifications of "Elite Fire" to carry out fire risk assessments.

88. The Applicant concluded that the costs incurred by the Respondent on the reports prepared by Mr Sharman and Mr Sursham were not reasonable and were not to the required standard.

89. The Respondent said that it had a statutory duty to carry out a fire risk assessment when material alterations take place in the communal areas of block of residential flats. In this case the Applicant had relocated the consumer unit from within his flat to the riser cupboard which was located in the communal area. According to the Respondent, this constituted a material alteration necessitating the commissioning of a fire risk assessment. The Respondent asked M A Sharman and Associates to carry out this assessment. Mr Sharman was a former fire officer and qualified to undertake fire risk assessments but he was also a director of the Respondent. Mr Sharman carried out the assessment on 30 September 2019, and charged a fee of £175. Mr Sharman identified the relocation of the consumer unit as an unacceptable fire risk.

90. The Respondent explained that at its Annual General Meeting on 5 March 2020 the Applicant requested an independent fire risk assessment because he believed that Mr Sharman had a conflict of interest. The meeting agreed to Mr Richardson's request, and appointed Mr Sursham to do the further assessment which was undertaken on 30 December 2020 for a fee of £350. Mr Sursham identified one significant issue and that was the location of the consumer unit for the Applicant's flat in the service riser cupboard in the communal area.

91. The Tribunal finds that (1) the parties were agreed on the necessity to carry out regular fire risk assessments; (2) the re-location of the consumer unit for Flat 12 constituted a material alteration which justified the commissioning of a fire risk assessment; (3) Mr Sharman had a potential conflict of interest arising from his position as Director of the Respondent; (4) the commissioning of Mr Sursham report was in response to the Applicant's concerns about conflicts of interest with Mr Sharman's report; (5) the Applicant adduced no evidence regarding the reasonableness of the costs for the reports, and (6) the Applicant's concerns about the reports being to the required standard were about his profound disagreement to the findings of the report .

92. **The Tribunal determines that the costs for Mr Sursham's report were reasonably incurred, and that the report was to**

the required standard. The Tribunal considers that the Respondent should have been alive to the potential conflicts of interest when commissioning a report from Mr Sharman, and in that respect the costs incurred on Mr Sharman's report were unreasonable. The practical effect of the Tribunal's decision is that the Applicant would not be liable to make a contribution to the costs of Mr Sharman's report which amounts to £11.67.

Unreasonable Company Expenditure

93. The Respondent has accepted that costs associated with the running of the company should not be charged to the service charge account.

Unreasonable Window Cleaning Expenditure of Non-Communal Windows

94. The Applicant asserted that the costs for cleaning the windows included the windows of the individual flats which he said could not be recovered through the service charge. The Applicant referred to sub-clause 7(d) of the lease which he said limited the Respondent's responsibility to keep clean the windows of the communal parts. The Applicant estimated that of the total cost of £14,712 for the period 2013-2021, only £872.42 was attributable to the cost of cleaning the communal windows. The Applicant asserted that the Respondent must refund the service charge account with the amount attributable to the costs for cleaning the windows belonging to the flats, which he estimated at £13,839.58.

95. The Respondent accepted that under the lease window cleaning of individual flats was the responsibility of the flat owner (Regulation 18 of the Fourth Schedule,). The Respondent, however, explained that at its initial AGM the members agreed for the window cleaning to cover all the windows of the building including those of the individual flats. This decision was taken because it would be less disruptive, and more economical. The Respondent produced a note from Pat Hooley, Company Secretary, dated 3 January 1997 which confirmed that the service charge covered the costs of exterior window cleaning. The Respondent asserted that all current leaseholders apart from the Applicant wished this service to continue as part of the service charge. The Respondent added that by providing a generic window cleaning service, the costs for each leaseholder would be cheaper than contracting separately for each flat. Further if the service was not provided elderly or absent leaseholders would find arranging for the cleaning of their own windows very difficult.

96. The Tribunal finds that the original leaseholders authorised the Respondent to engage contractors to clean all the exterior windows of the Building including the windows of the individual flats and to recover the costs of the cleaning through the service charge. Further the

Tribunal is satisfied that this arrangement had been longstanding, and continued to enjoy the support of the leaseholders except the Applicant. The question is whether the terms of the lease recognise the validity of this longstanding arrangement.

97. The Respondent argued that it had the power under sub-clause 9(11) of the lease to make such variations modifications or waivers of the Regulations set out in the Fourth Schedule and to make further Regulations provided it was for the management care and cleanliness of the Building and the comfort and safety and convenience of all the occupiers. The Respondent suggested that the provisions of sub-clause 9(11) enabled it to change who was responsible for cleaning the windows under regulation 18 of the Fourth Schedule. The Tribunal acknowledges that the Respondent can vary the Regulations and substitute new ones under sub-clause 9(11) but this did not give the Respondent the power to recover the costs of the cleaning the windows of the individual flats through the service charge. Also the Respondent has produced no evidence of documenting the change to regulation 18.

98. The Tribunal, however, considers that the Respondent is entitled to rely on clause 7(i) which enables the Manager to arrange for additional services for the proper, maintenance, safety, amenity and administration of the Building, for recovering the costs of cleaning the exterior windows of the Building including those of the flats through the service charge. The definition of Building in the Particulars includes the demised premises.

99. **The Tribunal decides that the leaseholders have given authority to the Respondent to provide a service of cleaning all the exterior windows of the Building, and that the Respondent was entitled to recover the costs of that service through the service charge by virtue of clause 7(i) of the lease.**

Unreasonable External Redecoration 2021

100. On 22 July 2019 the Respondent notified the leaseholders that it intended to carry out cyclical redecoration of the external areas of the Estate which included the windows, entrance doors, fascia and gable areas and any other previously decorated areas. The Respondent, however, stated that the works did not include the repair of window frames of individual properties. The Respondent suggested that if a leaseholder was interested in replacing the windows of their flat, the best time would before the start of the decoration, and that they would be given time to make their decision. The Respondent gave the leaseholders the statutory 30 days to make representations and the right to nominate a contractor. The Respondent indicated that the costs of the works would be funded from the reserves.

101. On 6 July 2021 the Respondent sent the leaseholders the second stage consultation notice detailing the estimates for the external decoration. The Respondent supplied details of two estimates: Darren J Roberts £5,700.00, and Multiprop £12,540.00. The notice invited written representations from leaseholders within the statutory period of 30 days.

102. On 3 August 2021 the Applicant made written representations which were answered in full on 17 August 2021 by Mr Stanhope on behalf of the Respondent.

103. The Respondent chose Mr Roberts who provided the lowest tender to carry out the works.

104. The works were completed around October 2021. On 3 November 2021 Mr Roberts submitted his bill for the external re-decoration which was £3,400.00 and amounted to a contribution of £226.67 from each leaseholder.

105. The Applicant asserted the following:

a) The Respondent was in breach of its obligations under sub-clause 7b of the lease in that it did not meet the five year cycle for re-decoration. According to the Applicant the Respondent last decorated the exterior in 2014.

b) The Respondent had failed to maintain the external parts of the window frame which has led to disrepair and as a result reduced the lifespan of the wooden window frames by 50 per cent.

c) The Respondent had failed to comply with the statutory consultation requirements in that there was a two year gap between the first and second notices, only two quotations were supplied, and the Respondent did not have genuine regard to the Applicant's observations submitted in response to the second notice.

d) The works carried out were not to the required standard. The Applicant supplied photographs of the building including the windows of the Applicant's Flat after the redecoration.

106. The Respondent's replies to the Applicant's assertions were as follows:

a) The external redecoration was planned for the latter part of 2019. The redecoration was delayed because several leaseholders were choosing to replace or repair their window frames before the decoration was due to start. This led to an overrun of the

works into Spring 2020 at which point the opportunity to commence the works was overtaken by the COVID 19 restrictions.

b) The Respondent noted that the Applicant had sought consent to install new windows which was given by the Respondent. Further the Applicant had not gone ahead with the replacement of the windows, and had demanded the Respondent to contribute 50 per cent of the costs of the replacement.

c) The Respondent maintained that it was the Applicant's responsibility to keep the windows in repair, and that the Respondent's obligation was limited to decorating the exterior surface of the window frames.

d) The Respondent and the contractor had noted that the windows which had not been replaced were in a state of disrepair. The Respondent stated that this was to be expected as they were made of softwood timber with the glazing bars external which resulted in the draining of rainwater down the windowpane behind the lower bar causing rot from the inside of the lower rail.

e) The Respondent acknowledged that some of the decoration was not completed because of the state of disrepair. The contractor had recognised this by not charging for works not completed in accordance with the original specification.

f) The Respondent had received no complaints from other leaseholders about the standard of the decoration completed.

107. The Tribunal refers to sub clause 4(1) and sub paragraph 1(a) of the First Schedule headed The Demised Premises of the lease:

> "4. THE Tenant HEREBY FURTHER COVENANTS with the Lessor and with the Manager and with and for the benefit of the Flat Owners that throughout the Term the Tenant will:—
>
> (1) Repair maintain renew uphold and keep the Demised Premises and all parts thereof including so far as the same form part of or arc within the Demised Premises all windows glass and doors (including the entrance door to the Demised Premises) locks fastenings and hinges sanitary water gas and electrical apparatus and walls and ceilings drains pipes wires and cables and all fixtures and additions in good and substantial repair and condition save as to damage in respect of which the Manager is entitled to claim under any policy of insurance maintained by the Manager in accordance with its covenant in that behalf hereinafter contained except in so far as such policy may have been vitiated by the act or default of the Tenant or the Flat Owners or

any person claiming through them or their servants agents licensees or visitors".

THE DEMISED PREMISES

"1. The premises specified in the Particulars as shown for identification purposes edged red on the Plan A annexed hereto and forming part of the Building including:

(a) The internal plastered or plaster board coverings and plasterwork of the walls bounding the premises and the doors and door frames and window frames fitted in such walls (other than the external surfaces of such doors door frames and window frames) and any glass fitted in such doors and window frames and…."

108. The Tribunal construes sub clause 4(1) and sub paragraph 1(a) of the First Schedule as placing the responsibility on the Tenant to keep the windows and frames (internal and external) in good and substantial repair and condition. The Lessor has no responsibility under the lease to repair the windows and frames. The Lessor's obligation is limited to decorating the external surfaces of the window frames.

109. The Tribunal finds the following:

a) The window frames of the Applicant's Flat were in a state of disrepair at the time the decoration was due to take place. The state of disrepair was a result of the Tenant's failure to comply with his/her repairing obligations over the term of the lease.

b) There was no obligation upon the Respondent to consult with the leaseholders on the external decorations because the costs incurred on the works were below the prescribed amount of £250 for the contribution of each leaseholder. If the Tribunal had been required to determine the issue, it would have found that the consultation requirements had been met.

c) The Respondent carried out a competitive tendering exercise and chose the lowest tender.

d) The contractor was unable to complete some of the decoration because of the state of disrepair of the window frames and other structures. The contractor reduced his final charge to reflect the fact that he was unable to carry out the original specification for the proposed works.

e) No other leaseholder complained about whether the decoration was to a reasonable standard.

110. **The Tribunal decides that the costs incurred on the external decoration were reasonable and that the works carried out were to a reasonable standard. The Applicant is, therefore, liable to pay a contribution of £226.67 to the costs of the works.**

Unreasonable Service Charges due to Missing Invoices

111. The Tribunal declined to adjudicate on this matter at the hearing. The Tribunal considered that it was an accounting issue which did not engage its jurisdiction. In any event the amounts involved totalled £723 (£48.23: The Applicant's contribution) were de minimus. The Applicant appeared to accept the Tribunal's ruling on this matter.

Access to the Demised Premises

112. The Applicant alleged that the Respondent was currently blocking access to the front door of the Applicant's flat. The Applicant invited the Tribunal to rule that the Respondent should provide immediate unhindered access to the front door of Flat 12 and order the Respondent to comply with the terms of the lease.

113. The Tribunal has no jurisdiction to make the Order requested by the Applicant.

Applications under section 20C of the 1985 Act, and Paragraph 5A of Schedule 11 of the 2002 Act, and Reimbursement of Fees

114. The Applicant applied for an Order under section 20C of the 1985 Act to prevent the Respondent from recovering the costs of the proceedings through the service charge. The Tribunal may make such Order under section 20C as it considers just and equitable in all the circumstances.

115. The Tribunal considers that these proceedings should not have been brought until the parties had resolved the outstanding issues arising from the Applicant's breach of covenant. The Applicant chose to speak for other leaseholders for which he had no authority. The Applicant has largely been unsuccessful with its Application. The Tribunal is mindful that it should be slow to interfere with parties' contractual rights and obligations. The Tribunal, therefore, considers it just and equitable not to make an Order under section 20C of the 1985 Act. For the same reasons the Tribunal makes no order against the Respondent to reimburse the Applicant's fees paid to the Tribunal under rule 13(2) of the Tribunal Procedure Rules 2013.

116. The Respondent indicated that it did not wish to pursue any contractual claim for costs against the Applicant in connection with this proceedings. Given the Respondent's concession it is not necessary to make an Order under paragraph 5A of Schedule 11 of the 2002 Act preventing the Respondent from recovering its legal costs in connection with this proceedings direct from the Applicant.

Conclusion

117. The Tribunal's jurisdiction under section 27A of the 1985 Act is limited to making orders on a person's liability to pay service charges which are expressed in monetary terms. The Tribunal's orders do not extend beyond the parties to the Application. The Tribunal's power to construe contractual obligations under the lease is inextricably linked to the question of the party's liability to pay service charges. The Tribunal has no freestanding authority to make declarations on the parties' contractual relationships or powers of enforcement of the contractual obligations.

118. The Tribunal's exercise of its jurisdiction was hampered in this case by the ongoing dispute regarding the potential forfeiture of the Applicant's lease and the contractual costs arising from the breach of covenant proceedings. The Tribunal expresses no view on the merits of this dispute. The Tribunal's comments are limited to the practical implications for its jurisdiction to determine the Applicant's application under section 27A of the 1985 Act. The Respondent has issued no demands for service charges for the periods beyond 24 December 2020 because it would appear that it does not wish to prejudice its option of taking forfeiture proceedings in connection with the Applicant's flat. This meant that the Tribunal's jurisdiction was restricted to the Applicant's liability to pay the seven quarterly on account demands of service charges in the sum of £2,856 for the period April 2019 to 24 December 2020 which the Applicant had paid.

119. The Application embraced matters which went significantly beyond the Applicant's liability to pay the on account service charge demands. The Applicant requested Orders on behalf of the leaseholders as a whole and covering periods going back to 2013 for which he had no authority to make. The Applicant saw the Tribunal proceedings as a platform to air his grievances about the Respondent and making allegations about the Respondent's bona fides.

120. The Tribunal is potentially at fault in allowing this to happen but it reached the stage where neither party was taking heed of the Tribunal's case management directions. The Tribunal considered that only a hearing of the Application would bring a resolution to these proceedings. The Tribunal expressed its concerns about the scope of the Application at the commencement of hearing but decided to deal with each of the issues as best it could on the evidence before it.

121. The Tribunal's determination is effectively limited to its decision on the Applicant's liability to pay the on account service charge demands for the period April 2019 to December 2020. The Tribunal has given decisions in respect of other matters that fall within its jurisdiction but these can only be implemented when the parties resolve their outstanding dispute on potential forfeiture proceedings and the Respondent has complied with the lease regarding balancing payments.

122. The Tribunal's disagrees with the Applicant's assertion that the Respondent has misappropriated service charge funds by its failure to comply fully with the machinery for the collection of service charges. The Respondent as with many other resident owned management companies have adopted practices with the full consent of its membership to manage the property in a manner that minimises the costs for the leaseholders whilst achieving its management responsibilities. The problem arises when a leaseholder does not agree and insists upon compliance with the contractual requirements which he is entitled to do. The Tribunal notes the Respondent's undertaking to comply with the lease requirements in respect of the accounting period, end of year Certificates and balancing credits and debits from this moment onwards. The Tribunal suggests that this should be backdated to the period when the Applicant assumed ownership of the property. The Tribunal observes that although it may add to the cost of managing the service charge, it does provide greater certainty about the use of service charge monies and better protection for all leaseholders.

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. The application must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk .

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.