FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AL/LSC/2019/0009** **LON/00AL/LSC/2020/0051**
HMCTS code (paper, video, audio)	:	**In person hearing**
Property	:	**Priory Place, Hermitage and Chantry Close Abbey Wood London SE2 9NG**
Applicant	:	**Mr Sola Noah and various leaseholders as listed in the applications**
Representative	:	**Mr Q Ahmed of Counsel**
Respondent	:	**Priory Place (Abbey Wood) RTM Company Limited and Priory Place (Abbey Wood) No 2 RTM Company Ltd**
Representative	:	**Mr L Lucan-Wilson of Counsel**
Type of application	:	**For the determination of** **(i) (ref no 2019/009) Those matters remitted from the Upper Tribunal** **(ii) (ref no 2020/0051) the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge H Carr** **Mr A Harris LLM FRICS FCIArb**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**22nd November 2022**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the costs demanded for the survey is reduced by £875 plus VAT

(2) The tribunal determines that all other costs are payable by the applicants.

(3) With regards to the challenges to the reasonableness of service charges demanded for the year 2019 – 20 the tribunal determines that these are reasonable.

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

(5) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The tribunal has before it two matters:

(a) The matters that have been remitted to it for further consideration and determination by a decision of the Upper Tribunal dated 8th July 2021 and made by the Deputy President, Martin Rodger QC and

(b) The applicants seek in addition a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by them in respect of the service charge year 2019 - 2020.

2. The tribunal issued a partial decision on the matters before it on 25th October 2021. The partial decision was based upon an agreement between the parties reached on 11th October 2021. It adjourned the remaining issues (set out below) to be heard on 13th December 2021. The parties were given time to provide additional submissions subsequent to that hearing.

3. The tribunal received the following from the parties on 14th January 2022.

The hearing

4. The Applicant was represented by Mr Q Ahmed of Counsel at the hearing and the Respondent was represented by Mr L Lucan-Wilson of Counsel.

In attendance for the applicants were Mr Sola Noah and Ms Aicha Bokadida. In attendance for the Respondent was Mr Stephen Wiles.

The background

5. The background is set out in the partial decision dated 25th October 2021.

The issues

6. The further directions issued on 25th October 2021 identified the following issues as outstanding

    (i) The reasonableness of the surveyors fees

    (ii) The payability of

    a. Insurance

    b. Service charge demands

    c. RTM running costs

    d. Accountancy fees

    e. Management fees

    f. Bin hire/waste collection

    g. Legal and professional fees

    (iii) The reasonableness of the management fees and the bin hire fees for the service charge year 2019 – 20

    (iv) costs

7. The tribunal is grateful for the Scott Schedules provided at the December 2021 hearing which has given focus to the determination.

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

<u>The reasonableness of the surveyor's fees</u>

The applicants' argument

9. The applicants seek the refund of all surveyor fees and associated costs, which have been charged to the leaseholders in connection with the major works.

10. The applicants argue that because the major works were cancelled and all other associated charges have been refunded to the leaseholders by the respondents, the surveyors charges should also be refunded to the leaseholders.

11. They argue that the surveyor is billing for services that have not been provided, that the billing is for work which should not have been carried out and that the billing is not in line with the fee scale provided by the surveyor.

12. They further argue that the survey was not up to standard as they considered that there were major errors identified in the specification report produced including the survey of a block of flats which was not part of the development.

13. Additional costs were incurred relating to that block of flats. The reports produced were based on major errors and were therefore not fit for the purpose. The tender process for the works was flawed and biased. Due diligence was not carried out on the recommended builder which if carried out would have shown the builder was not fit for purpose.

14. The applicants produced an estimate form Hann Graham Ltd which indicated that the surveying work could be done for considerably less money than that charged by the Respondent's surveyor.

The respondent's arguments

15. The respondent asked four surveying firms to quote for the management of the project. They awarded the contract to Consult Construct as they offered the lowest percentage rate.

16. The respondent argued that the surveyors costs were correctly and lawfully incurred and were of a reasonable cost. They are therefore reasonably incurred by the RTM Company and should be allowed in full.

17. The total fees incurred were £9265.00. These fees were for finalising the specification and some subsequent meetings with the client, and also liaison with Network Rail (a Crossrail building site was adjacent). The

specification was also tendered prior to being amended, and then re-tendered.

18. The Respondent accepts that there may have been an initial mistake whereby gas meter box maintenance was included in the initial specification. There is no gas at the development and this was removed. This did not result in any increased cost to anyone.

19. There is no evidence that the surveyor included the Felixstowe Road building in his specification (as is alleged by the Applicant). In fact, it is specifically excluded in the specification (Section 3.1 of the final spec dated Sep 2017).

20. Photographs of the development clearly show that the exterior of the buildings is in poor condition and requires repair. The Respondent was entirely right to commission these works and incur the cost of the surveyor.

21. The Applicant has obtained an opinion from a different surveyor who claims that the works were (in some areas) over-specified. The Respondent does not agree. Even if true this would have little difference on the surveyors costs incurred, as a detailed specification and site visit would still be required.

22. The Applicant has claimed that the surveyor he contacted (Hann Graham) would have charged £1000 to manage such a project. This is incorrect and not credible. Mr Graham's invoice (p925 of the original bundle) is only for his site visit and letters.

23. The Respondent says that this suggests that had Hann Graham been granted the whole project there would have been very significant additional costs. In any event, it is trite to say that estimates of costs are almost always vastly overtaken by the reality of what happens on the ground. The reality is that the Applicants have not produced sufficient evidence that there is a surveyor who would have been willing to undertake the works for a considerably cheaper price.

24. Although the project stalled due to the FTT challenge by the Applicants the Respondent says that this does not affect the chargeability of the costs in any way.

The tribunal's decision

25. The tribunal determines that the amount payable in respect of surveyor's fees is £7755.00 inclusive of VAT

Reasons for the tribunal's decision

26. The Respondent made concessions in the course of the hearing in December 2021 of 25% of a fee for the initial survey of £3,500 (sic) plus VAT. The invoice was for £3850 plus VAT

27. The tribunal accepts that the original specification included incorrectly the Felixstowe Road Block of 8 flats. A reduction in the fee is therefore appropriate. The tribunal determines that a fee of £2,625 plus VAT as conceded is appropriate as the Felixstowe Road Block is significantly smaller that either of Chantry or Hermitage.

28. The remaining fees are payable. The tribunal accepts that that the fee charged to the applicants by Hann Graham was an initial inspection fee and not a fee for a full specification and related work. That another surveyor may have come to a slightly different programme of repair does not make the initial specification or fee unreasonable.

The payability of the insurance

The applicants' argument

29. The applicants argue that the insurance is not payable as the procured insurance policy is not in accordance with the terms of the lease.

30. The lease provides, at Part III of the fifth Schedule, paragraph 8.1, that the Lessee and the Company will be included in the policy as insured persons and to produce to the Lessee on request the policy of insurance.

31. The insurance policies procured by the company only placed the insurance in the name of the company alone with no mention of the lessee. The applicants argue that merely dealing with the leaseholders' interest by the general interest clause is not the same as having the Lessee and the Company included in the policy as insured persons.

32. The applicants referred the tribunal to ***Green v 180 Archway Road Management Co Ltd*** [2012] UKUT 245 (LC) and ***Atherton v M.B. Freeholds Ltd*** [2017] UKUT 497 to argues that the law requires that the insurance must be placed as specifically required by the lease.

33. The applicants also pointed out that the insurance policy had in the past been placed in a way that complied with the lease.

The respondent's argument

34. The respondent argues that this is a question of interpretation of the lase. The respondent distinguishes between a requirement for a joint policy

between the appropriate lessee and the landlord and the provisions of the lease of the property where the obligation is that the applicants are included in the policy as insured persons. This is deal with by their inclusion in the general interest statement. Any lessee is able to make a claim on the policy independently of the respondent or the managing agent and the respondent says that this is sufficient for the requirements of the lease.

35. The respondent says that the case law cited by the applicants can be distinguished as those cases required a joint policy between the lessee and the landlord which is more than the obligation demanded by the applicants' lease which is that the lessees be included as an insured persons.

The tribunal's decision

36. The tribunal determines that the amount demanded in respect of insurance is payable by the lessees.

Reasons for the tribunal's decision

37. The terms of the relevant clause of the lease require that the Lessee and the Company are to be included in the policy as insured persons. The tribunal agrees with the respondent that this requirement must be less onerous than an obligation that the insurance is in joint names. It also agrees that the most obvious understanding of the obligation is the lease requires that the lessees are covered and can make a claim on their own behalf. This is the case with the policy that the respondent has sourced and the tribunal therefore accepts the evidence of the respondent that its arrangements complied with that term of the lease.

38. The cases the tribunal was referred to by the applicants concern very specific clauses relating to insurance being in joint names. In each of the cases the Upper Tribunal made it clear that the terms of the lease must be complied with. That is what is required and that is what has been done by the Respondent.

The validity of the service charge demands

The applicants' argument

39. The applicants argue that none of the service charges in the relevant years are payable because there have been breaches of section 21 and section 47/48 of the Landlord and Tenancy Act 1985 and contractual breaches.

40. The applicants refer to the following clauses of the lease.

(i) 4th Schedule Part II para 1(a) - The Total Service Charge in respect of each Maintenance Year shall be computed not later than the beginning of March immediately preceding the commencement of the Maintenance Year (...) and the proportion of the Total Service Charge which the lessee is required to pay (...) shall forthwith be notified in writing to the lessee..."

(ii) 4th Schedule Part II para 1.7 - the Maintenance Year" shall mean every twelve-monthly period ending on the 31st day of March the whole or any part of which falls within the Term

(iii) Total service charge computation – 4th Schedule Part II para 2(ii) it must include 'an appropriate amount as a reserve for or towards those of the matters mentioned in the Fifth Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year during such unexpired term including (without prejudice to the generality of the foregoing) such matters as the decorating of the exterior of the Estate and Block the repair of the structure thereof and the repair of the Conduits"

(iv) Fourth Schedule Part II para 4 Subject to provisions of paragraph 2 (ii) of this part of this Schedule a certificate signed by file Company and purporting to show the amount of the Total Service Charge and or the Service Charge or the amount of the Maintenance Adjustment for any Maintenance Year shall be conclusive of such amount"

41. The applicants argue that the following breaches have occurred

Failure to comply with the terms of the lease

(i) The applicants argue that their liability to pay does not arise until the respondent has fulfilled the obligations set out in the lease.

(ii) They say that there has been a failure to inform the lessees *'forthwith'* of the proportion of the total service charge which a lessee is required to pay as required by para 1 (a) of Part II of the Fourth Schedule of the lease. There is no demand and/or

notification from the respondent showing the proportion of the total service charge for any maintenance year. What exists are demands showing half of the total service charge contrary to the terms of the lease.

(iii) There has also been a failure to comply with the requirement of para 9 of Part II of the Fourth Schedule, that the service of notices under the lease must comply with s.196 of the LPA 1925. Because the respondent has not sent the required notices in accordance with these terms of the lease, and instead have uploaded them on to the online portal there has been a breach of this requirement.

(iv) Demand notices are required by para 1(b) of the Fourth Schedule Part II to be sent out before the half-yearly days, 1st April, and 1st October to be enforceable. As all demand notices are sent out late this renders them invalid.

Reserve fund issues

(i) The applicants say that the lease requires that the amount to be demanded must contain an element of reserve fund. The amounts in the demands, on the face of it they say, may well include reserve funds but evidence exists which shows that reserve funds were removed in the final accounts.

(ii) The applicants argue that this means that all the interim demands are invalid. Here the applicants rely on the total service charge computation set out in the Fourth Schedule Part II para 2(ii)

(iii) The applicants say that the only part of the Total Service Charge that is open to adjustment at the end of the Maintenance year is the estimated expenditure. because reserve funds can neither be adjusted nor removed from the Total Service Charge in any final accounts the actions of the respondent in removing it is prejudicial to and deceiving of leaseholders and prejudicial to the running and management of the Estate and the Block. More importantly the applicants argue that it invalidates all served interim on account demands retrospectively.

(iv) Moreover, the company is obliged to provide a valid signed certificate and final accounts which must include reserve fund (the Fourth Schedule, Part II, para 4). There has been no attempt to fulfil the signed certificate requirement.

(v) The applicants say that this is more than a mathematical error. They say that it is a fundamental issue. They also reject the suggestion that lessees don't pay enough of the service charges demanded as disingenuous because the respondent is empowered to demand deficits through maintenance adjustment.

Statutory breaches

s.47

(i) The lessees accept that correct statutory information has now been served in accordance with sections 47 and 48 of the LTA 1985 but argue that all administrative and legal charges for debt recovery should be refunded to affected leaseholders.

(ii) The applicants acknowledge that the respondent agreed to refund all costs to Hermitage Close leaseholders but the return of those costs to Chantry Close leaseholders remans a live issue.

(iii) With regards to Chantry Close, in August 2017, the respondents changed their registered address but failed to update demands as appropriate, contrary to the decision of **Beitlov Properties Ltd v Martin** [2012] paragraphs 9, 10, 11 and 12.

(iv) With regard to Hermitage Close the applicants say that the respondent has yet to fully abide by the agreement reached in October 2021. Re-issued invoices are yet to comply with section 47 and leaseholders are still being left to guess who the landlord is.

Section 21

(i) The applicants argue that the respondents failed to respond to the request made on 4th – 6t August 2019 for the year 2018 -19. Section 21 of the LTA 1985 says that the summary of costs incurred must distinguish between items /costs for which no payment has been demanded of the landlord within the accounting period, items costs for which payment has been demanded by the landlord but not paid in the period, and items paid in the period by the landlord. Further Section 21 (6) requires that if there are more than four dwellings then the summary must be certified

(ii) In addition, the applicants argue that even if statutory breaches were partly remedied, the time limit on making demands under section 20B applies. None of the costs have, in the submission of the applicants, been validly notified in writing in accordance with the lease, that those costs have been incurred and that leaseholders would subsequently be required under the terms of the lease to contribute to them by the payment of service charge.

(iii) The applicants say that all s.20B notifications must meet the test required by the cases and that as all the supplied interim demands are invalid they could not meet the contractual and statutory obligations on the landlord.

The respondent's arguments

<u>The general obligations of the lease.</u>

42. The respondent argues that the service charge budget prepared and sent to the Lessees is the computation required by the Lease. It accepts that that in some years, the service charge computations were not issued until after 1 April. However, in each case where the computation was late, it would have accompanied the first half year service charge bill.

43. Accordingly, in each case the respective Lessee was sent the service charge demand at the same time as the computation, and even on the Applicants' case, the payment obligation arose since a computation was provided (subject to the other points on notice and ss47 and 48).

44. The respondent argues that it is not correct that the requirement to pay is based on the provision of the total service charge computation. The requirement to pay is premised on the demand being made by the respondent. The respondent relies on Schedule 4, Part II para 1 (b) . As a matter of interpretation, the respondent argues that the only prior

condition on the lessee's payment obligation is that a written demand has been served. The respondent therefore makes a distinction between the service of a written demand which is a condition of the applicants payment obligation and the requirement to provide the computation which is an obligation under the lease but not a condition of the payment obligation.

45. The respondent also argues that it is not correct that if a demand is served late that means then there is no ability for the sums to be demanded. This is contrary to the express words of the Lease.

46. Clause 9 does not apply to the notification required by the Fourth Schedule Part II para 1(a) since the document envisaged is not defined as a notice either under the general law nor in the lease specifically. In this context, notice is a term of art, and the draughtsman of the Lease has not provided that there is an obligation to serve a notice. As such s.196 of the LPA does not apply. The expression used specifically fails to mention a notice.

47. The respondent also argues that the applicants have been appropriately notified by the posting of the demands on the online portal. The respondent relies on Schedule 1 to the Interpretation Act 1978 which defines writing, inter alia, as reproducing words in a visible form'

48. The respondent also says that as any reminders or final warnings, which must also be construed as service charge demands are also sent by post and met any requirements for service even if there were construed as notices.

<u>Reserve Funds</u>

49. The respondent argues that whilst the service charge to be paid must include an amount in respect of the reserve fund, that is not the same as a requirement that the demand itself must reference a specific amount that is for the reserve fund. The Service charge has been demanded on a basis that includes a payment of the reserve and accordingly the contractual requirements are met.

50. The lease does not set out the specific requirements of the prior written demand which the respondent is to make. It is the total service charge computation which must show the amount which is due for the reserve fund and not the demand.

51. It is not accepted that the Reserve Fund has been removed from the accounts, although it is accepted that some of the reserve funds have been used to fund deficits. Any potential misuse of the reserve funds has no bearing on the liability of the applicants to pay the service charges.

52. The respondent does not accept the applicant's interpretation of para 4 of the 4th Schedule Part II. The wording the applicants quote makes clear that the provision is a saving provision and not one which imposes any positive obligation on the Respondent to serve such a certificate. It is the choice of the Respondent whether it does so or does not.

53. As regards the second issue raised by the applicants to do with the reserve fund, the respondent says that it is not correct that when demands are uploaded late, they are then invalid. When demands are sent out late, the Lessee only becomes under an obligation to make a payment when the demand is received. The sending of the demand is a condition precedent of the Lessee's obligation and if the respondents no compliance meant that the Lessee could not fully comply it would not be possible for the respondent to then institute any sanction for the late payment caused by the late service of a demand.

Sections 47 and 48

54. The respondent says that to the extent that the address is suggested to be incorrect the respondent relies on the statement in Beitov Properties 'if there is more than one place of residence or place from which business is carried on, then depending on the facts it may be that only one of such addresses will do'.

55. The respondent submits that this is such a case where the Applicants would have been aware who their landlord was and where they might be located. The respondent companies were formed with a registered office of 19A Chantry Lane, but this was changed to Devonshire House. The 19A Chantry Lane address is still used for the business of the companies and is therefore a valid address for the Respondents alongside the Devonshire House address.

56. Even if there are defects these have been cured retrospectively by the service of new demands. There is now nothing in the point that failure of statutory compliance means that the demands are invalid.

57. The demands are not relied upon by the Respondent as constituting any form of s.20B(2) notification.

58. The respondent also says that it does not understand the suggestion that a failure to determine the maintenance adjustment renders the service charge itself non-payable. The respondent says that the applicant's allegation suggests that any potential breach of any term means that the respondent is not able to claim a service charge. This must be incorrect as a matter of contract law. It is only if a breach is of a condition precedent of the applicants' payment obligation. This is not the case with the maintenance adjustment nor with the reserve fund.

59. The proper way for the applicants to proceed would be for them to raise any alleged breaches as a means of preventing further payment caused by the breach not by any alleged breach invalidating previous payments which have been validly made.

60. The applicants' construction makes little sense because the maintenance adjustment will always be done after the service charge demands have been made and paid. The failure to make the adjustment therefore cannot invalidate prior payment duly made in accordance with the Lease

61. The respondent accepts that no deficit demands were served but eh failure to serve such demands does not render the service charge no-payable.

62. Further the obligation to serve deficit demands is not time specific and if such an obligation exists the respondent would be able to cure it by the service of new demands now, since the is would be service determined after the end of the maintenance year.

63. The use of reserve funds is outside of the jurisdiction of the FTT.

Section 21

64. The respondent points out that no authority is cited for the proposition that failure to comply with a requirement to serve a s21 report means that rent is no longer due and payable under the Lease. The respondent suggests that it would be difficult to reconcile this with the express statutory wording.

65. To the extent that the accounts are not s21(5) compliant, the Respondents note the statements with each set of accounts that in the accountant's views, they were in fact compliant. The Respondents will rely on and asks that the Tribunal find that the Respondents had reasonable excuse for not complying with those requirements; they were told that they had in fact been complied with by those who were intended to meet the demand.

66. The Respondents were unaware that for the purposes of a s21 report, a "qualified accountant" is in fact required to be a person or body which is eligible for appointment as a statutory auditor, and accept that Grugeon Reynolds Accountants, while qualified accountants in the normal sense of the term, are not statutory auditors.

67. With regards to the requirement of a signed Certificate – clause 4 58 - s the respondent argues that clause 4 does not put any specific obligation on the respondent to provide a signed notice.

68. The respondent says that clause 4 was almost certainly intended as a way of avoiding a Lessee complaining that the Total Service Charge was wrong, such that they did not have to pay it or were only liable for a lesser amount. In the absence of the Clause 4 certificate, the Lessee could argue that they are only liable to pay the "Total Service Charge" as defined by the Lease, which could be separate to the Total Service Charge which has been demanded by the landlord. A clause 4 certificate combines those concepts so that a Lessee would not be able to argue that the sum in the certificate did not constitute the Total Service Charge.

69. The Respondent argues that it is clear from the wording that there is not an obligation on the landlord to serve a certificate. There are no imperative words in the clause at all; it does not say that the landlord "shall", "will" or "must".

70. The respondent accepts that the demands need to be contractually valid for the purposes of s20B, but it argues that the demands were all contractually valid, and to the extent there are statutory invalidities these may be rectified retrospectively, which they now all have been. The respondent accepts that the various documents served would not be sufficient notification under s20B(2) – primarily because it was never intended that they would serve as such a notification in circumstances where even demands served slightly late have at all times been in accordance with the timescale required by s20B(1).

The tribunal's decision

71. The tribunal determines that the service charges for the years in dispute are payable under the lease.

The reasons for the tribunal's decision

72. The applicants' argument that all requirements of the lease must be fulfilled before service charges are payable is not correct. It is only those that are a precondition of the payment obligations.

73. The tribunal agrees with the respondent that the service charges are payable under the lease. In particular it agrees with the argument of the respondent about the interpretation of the lease that as long as a written demand has been served the service charges are payable. In other words, the only requirement of the lease which is a precondition for payability is that a prior written demand has been received. This is distinct from the requirement to provide the computation which is an obligation under the lease but not a condition of the payment obligation.

74. The tribunal also agrees that posting the demands on the portal is sufficient. It notes that there was some argument that some lessees could not access the portal but accepts the position of the respondent that

debtors were excluded and determines that on the balance of probabilities lessors who were not debtors were able to access the portal. It also notes that the respondent says that reminders or final warnings, which must also be construed as service charge demands, are also sent by post and therefore meet any requirements for service even if there were construed as notices.

75. It also agrees with the respondent that s.196 of the LPA does not apply to the notification required by the Fourth Schedule Part II para 1(a) since the notification is not defined in the lease, or in general law as a notice.

The reserve funds

76. The tribunal agrees with the respondent that there is no requirement that the service charge demands themselves must reference the specific amount that are for the reserve fund.

77. The tribunal agrees with the respondent that any potential misuse of the reserve funds is not relevant to the liability of the applicants to pay the service charges.

78. The tribunal also agrees that late service of the demands does not render those demands invalid.

Sections 47 and 48

79. The tribunal does not consider that there has been a breach of s.47/48 of the LTA 1987. It agrees with the respondent that the decision of the Upper Tribunal *Beitov v Martin* [2012] UTUK 133 indicates that there is flexibility where there are two addresses from which the landlord carries out business and in the particular circumstances of this case the tribunal founds that on the balance of probabilities there has been no confusion about the identify and location of the landlord.

Failure to serve s21 LTA 1985 reports

80. The tribunal accepts that the Respondent has a reasonable excuse for any failure to comply with the requirements of the statute as it relied on the assurance of the accountants who it considered to be qualified. There is an understandable confusion around the requirement for qualified accountant which would normally not mean the same thing as a requirement that they are a statutory auditor. Therefore, the tribunal does not consider there has been a breach of s.21.

S.20B(1) LTA 1985

81. As the tribunal has accepted that the demands were contractually valid there has been no breach of s.20B(1)

The payability of the RTM running costs

The applicants' arguments

82. The applicants argue that the running costs of the RTM are not payable as the lease does not provide for the payment of such costs via the service charge.

83. They argue that the running costs of the RTM, its setup fees, the RTM directors' insurance and accountancy fee of the RTM account is not and cannot be regarded as a cost referred to in the lease at para 4 of the Fifth Schedule Part 1.

The respondent's arguments

84. The respondent argues that it is entitled to a reasonable sum to remunerate it for its administration and management expenses which can include a profit element whether that reasonable sum must be paid on one occasion or may be made up of multiple instalments. The Respondent submits that it is perfectly proper for the sum to be paid based on the administration and management expenses actually incurred by the Company noting that the lease specifically allows profit costs, which the Respondent has not claimed. The respondent points out that the applicants therefore get a significantly more lucrative arrangement than the one set out in the lease.

85. The respondent argues that the only question for the tribunal is whether the amounts charged for the RTM expenses constitute a reasonable sum rather than the method of payment. The respondent submits that it is such a sum. It also notes that the Upper Tribunal did not cast any doubt on the FTT's previous decision that (when these costs were included in the service charge) they were reasonable.

The tribunal's decision

86. The tribunal determines that the running costs of the RTM are payable.

The reasons for the tribunal's decision

87. The tribunal notes the obligation in the lease which is that the lessees pay "a reasonable sum to remunerate the Company for its administrative and management expenses (including a profit element)" and accepts the

argument of the respondent, that it is entitled to the running costs and that the way in which it has chosen to demand those costs complies with the requirements of the lease. The tribunal notes that the respondent has conceded that the applicants will be reimbursed for the fees for the RTM set up.

The payability of the accountancy fee

The applicants' argument

88. The applicants argue that the accounts have not been prepared in accordance with the terms of the lease and thus are not payable. They say that there should be two separate accounts for each legal entity, Priory Place (Abbey Wood) RTM Company Limited – Chantry Close and Priority Place (Abbey Wood) RTM 2 Company Limited – Hermitage Close

89. They argue that the accounts should be separated in this way because the two companies are separate legal entities, and the lease refers to a company and not multiple companies.

90. They also argue that the account should not contain the individual expenses of any RTM company as that is not consistent with the terms of the lease. Further they argue that the account preparation did not take reasonable steps to ensure that figures listed are accurate.

91. The applicants refer to points argued above in relation to reserve funds .to argue that the accounts are invalid, inconclusive and prepared to an unreasonable standard

The respondent's arguments

92. The respondent argues that the applicants' challenge is misconceived. Their argument amounts to a suggestion that because the accounts were allegedly not complied in accordance with the terms of the Lease, the respondent was not liable to pay the accountants fees and/or such fees were not reasonably incurred.

93. The reasonableness of the charges was considered by the Upper Tribunal which did not disturb the Tribunal's finding that these were reasonable charges.

94. The lease requires that the accounts are prepared in accordance with the service charge schedules, which does not require the provision of separate accounts for each company. The total Service Charge is the total amount payable by all lessees across the Estate which includes both blocks and therefore the computation and communication of the Total

Service Charge must be done on the basis of both blocks. Separate company (not service charge) accounts are prepared by each company separately for submission to Companies House as required.

95. The funds are held in a trust client account in accordance with good practice.

96. All allegations of misconduct relate to reasonableness of the charges for the accounts and the issue of reasonableness is not before the tribunal.

The tribunal's decision

97. The tribunal determines that the amounts demanded for the preparation of accounts are payable by the applicants.

The reasons for the tribunal's decision

98. The tribunal agrees with the respondent, that the challenge to the playability of the accounts is misconceived. The lease requires that the accounts are prepared and this has been done. The amounts charged by the accountants are payable.

99. Even if there were breaches of the lease which were reflected in the accounts, this would not make the charges not payable. And as determined above, the tribunal finds that the breaches of the lease argued for by the lessees are not in fact made out.

100. Several of the points raised by the applicants go to reasonableness of the charges. As the respondent notes, the reasonableness of the charges is not in dispute.

The payability of management fees

The applicants' arguments

101. The applicants argue that the managing agents have broken the terms and conditions of their contract with the RTM and have breached the statutory requirement and contractual terms of the lease on numerous occasions. They say this is distinct from the reasonableness of the fee.

102. They say the fees are not payable in addition because of poor handling of administrative duties, depletion of reserve funds, the mix up between

estate and block charges, delays in paying bills, withholding accounts, and not allowing leaseholders access to their service charge invoices.

103. The applicants also challenge the reasonableness of the management fees for the year 2019 – 20. They argue that they have a more competitive quote from a more qualified agent who is also a member of RICS.

The respondent's arguments

104. The respondent says that the challenge to the payability of the management fees, that the costs are not payable because the agent is allegedly guilty of breach of contract, is flawed.

105. The reasonableness of the charges was considered by the Upper Tribunal which did not disturb the finding of the FtT that these charges are reasonable. Therefore, the respondent does not agree that these sums are challengeable by the applicants in these proceedings, other than the years 2019 – 20.

106. In relation to the charges for the year 2019 – 2020 the respondent argues that the fact that a service is available cheaper elsewhere does not demonstrate that the costs are unreasonable.

The tribunal's decision

107. The tribunal determines that the management fees are payable.

108. The tribunal determines that the management fees for the year 2019 – 20 are reasonable. The respondent is correct in arguing that it is not obligated to accept the lowest quote for the provision of services. The tribunal consider that the management charges are very reasonable.

The reasons for the tribunal's decision

109. The tribunal agrees with the respondent that the applicants' challenge is misconceived. The arguments they raise go to reasonableness and not payability. It is not possible to craft a payability challenge via allegations of misconduct or incompetence. The managing agents were contracted by the Respondent to carry out tasks which have been carried out, albeit not as the applicants would like the tasks to be carried out. The fees which are agreed and demanded are therefore payable.

110. The tribunal draws on its own experience to determine that the management fees are reasonable and agrees with the respondent that it does not have to choose the cheapest quotation.

Legal and professional fees

The applicants' argument

111. The applicants argue that legal and professional fees charged by the managing agents are not payable because there is a conflict of interest in that the managing agents are charging the RTM to defend breaches of the lease that the managing agents are responsible for.

112. They also argue that the fees are not payable because the respondent is contractually prevented from charging for legal costs.

The respondent's argument

113. The respondent argues that there is no relevant to the conflict of interest argument. The Respondent is allowed to retain its preferred agent and that right is not removed by the allegations that the applicants make against the managing agents.

114. The charges levied are charged at a reasonable rate and are properly payable.

The tribunal's decision

115. The tribunal determines that the legal and professional fees are payable.

The reasons for the tribunal's decision

116. It is standard practice for landlords to instruct managing agents to represent them at tribunal proceedings and it makes no difference that the managing agents are defending allegations made against them.

117. The tribunal does not accept that there is anything preventing the respondent from charging for legal costs.

118. There is no evidence that the legal costs are not reasonable.

Bin hire

The applicant's argument

119. The applicants raise the issue of bin hire costs which they say are not payable.

120. In connection with the bin hire costs for 2019 – 20 the applicants say that the charges exceed the sum of bin hire costs charged by Greenwich Council.

The respondent's argument

121. The respondent says that the sums prior to 2019 – 202 fall outside of the purview of the tribunal as they were not remitted by the Upper Tribunal . Therefore, the tribunal is bound by its decision that the costs were fair and reasonable.

122. The respondent says that the charges are for bulk waste collection due to additional rubbish being dumped by residents. It is the Respondent's duty to deal with this under the lease. It is reasonable for the respondent to incur these costs and charge them back to the residents via the service charge.

The tribunal's decision

123. The tribunal determines that the bin hire costs are payable and in connection with the additional years in dispute 2019 - 2020 it determines that they are reasonable.

The reasons for the tribunal's decision

124. The tribunal accepts the argument of the respondent that it has a responsibility to deal with rubbish dumped on the estate.

125. There has been no evidence from the applicants to demonstrate that these are unreasonable.

Application under s.20C and refund of fees

126. The applicant made an application for a refund of the fees that they had paid in respect of the application/ hearing[1]. Taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant [within 28 days of the date of this decision].

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

127. In the application form the applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines not to make an order under s.20C.

Name: Judge H Carr **Date:** 22nd November 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).