FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AN/LSC/2018/0194**
Property	:	**Ground Floor Flat, 44 Charleville Road, London W14 9JH**
Applicant	:	**44 Charleville Road Limited (freeholder)**
Representative	:	**Ms Josefine Kristiansen & Mr Francis Smulders (directors)**
Respondents	:	**Ms Antonella Veccia & Mr Paolo Sparapassi (leaseholders of the ground floor flat)**
Representative	:	**In person**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Timothy Powell** **Mr Ian Holdsworth FRICS**
Date of hearing and venue	:	**24 September 2018 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**11 December 2018**

DECISION

Note: the numbers in square brackets referred to the pages in respect of the hearing bundle, so that [26] is page 26 of the bundle.

Decisions of the tribunal

The tribunal determines that:

(1) The wording of the lease entitles the landlord to establish and maintain a sinking fund in respect of anticipated future expenditure on major works;

(2) The estimated sum of £6,400 per annum is a reasonable amount for the sinking fund for the service charge years 2017-18 to 2027-28;

(3) In respect of the service charge years 2017-18 to 2027-28, the proposed budgeted figures of £11,521 in 2017-18 and £11,214 in subsequent years are reasonable; and in respect of the service charge years 2018-19 to 2027-28, the future estimated sum of £2,843 per annum is payable by the respondents (being their 25.35% share of the total);

(4) In respect of the actual 2017-18 service charge, the sum of £3,113.38 is reasonable and payable by the respondents (including their share of the £6,400 per annum allocated to the sinking fund); and a table of the sums claimed and allowed for 2017-18 is attached to the end of this decision;

(5) There is insufficient evidence to determine whether the respondents are owed anything by the applicant in respect of unspent monies from the 2014 major works, or in respect of any other funds received or held by the applicant; and

(6) The respondents shall pay the applicant £300 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the applicant.

The application

1. The applicant company seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent leaseholders for the service charge year 2017-18, and for future years, including the sums allocated by the applicant for a sinking fund.

The hearing

2. At the hearing, the applicant was represented by its directors, Ms Josefine Kristiansen and Mr Francis Smulders, and the respondents appeared in person.

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

The background

4. The subject property is a five-storey, stucco-fronted Edwardian house ("the Building"), which is divided into three flats. The top floor maisonette, consisting of three floors, is owned by Mr Smulders and Ms Kristiansen, and is responsible for 50.69% of the service charge costs of the Building as a whole; the ground floor flat is owned by the respondents, Ms Veccia and Mr Sparapassi, and is responsible for 25.35% of the service charge costs; and the

basement flat is owned by Mr Smulders and is responsible for 23.96% of the service charge costs.

5. The flat owners hold one share per flat in the applicant company, 44 Charleville Road Limited, which owns the freehold of the Building. Ms Kristiansen and Mr Smulders are the directors of the freehold company and together, by reason of simple arithmetic (2 shares against 1), they control the company and what happens in the Building.

6. The respondents hold a long lease of the ground floor flat, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge in the proportions set out above. The specific provisions of the lease and will be referred to below, where appropriate.

7. The parties have been in disagreement regarding the maintenance and repairs of the Building since buying the freehold in 2007 [36]. To avoid further disputes, in 2010 the applicant appointed a professional managing agent, Urang Property Management Limited ("Urang") to manage the Building. However, the respondents were not happy and, in 2011, they applied unsuccessfully to the Leasehold Valuation Tribunal (as it then was) for an order appointing a different manager. Thereafter, disputes between the parties continued, resulting in a further tribunal application in 2014, regarding payment for major works to the Building; and then the current application.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Does the lease entitle the landlord to establish and maintain a sinking fund in respect of anticipated future expenditure on major works?

   (ii) Is the amount charged in respect of the 2017-18 service charge reasonable and payable by the respondents?

   (iii) Are the amounts in the proposed budgets for the next 10 years, especially those proposed for the sinking fund, reasonable and payable by the respondents?

   (iv) Should any sums be refunded to the respondents in respect of the unspent balance of monies collected in respect of major works carried out in 2014?

9. Having heard evidence and submissions from the parties and considered all the documents provided, including post-hearing submissions, the tribunal has made determinations on the various issues as follows. A table of the sums claimed in 2017-18 and allowed by the tribunal is attached to the end of this decision.

Landlord's entitlement to establish a sinking fund

10. In the papers before the tribunal, the respondents disputed strongly that the terms of their lease entitled the landlord company to establish a sinking fund. They had taken legal advice from the Leasehold Advisory Service and from a barrister to this effect [111].

11. At the outset of the hearing, the tribunal drew the parties' attention to the decision of the Court of Appeal in *St Mary's Mansions Limited v Limegate Investment Co Limited* [2003] 1 EGLR 41 ("*St Mary's Mansions*"). Copies of the judgment were given to the parties and the tribunal explained that the the material terms of the lease in that case were identical to the respondents' lease in the present case; and that the Court of Appeal had decided that such lease terms entitled the landlord to establish and maintain a reserve fund, giving details as to how reserve fund demands were to be allocated and certified.

12. The parties were given 40 minutes to consider the judgment, but the tribunal emphasised that they would not be forced to proceed on this issue if, having read the judgment, they decided that they needed more time to take legal advice about it. If that were their decision, the tribunal would put the issue of the landlord's entitlement to establish a sinking fund to one side and would proceed to deal with the remaining issues.

13. After 40 minutes, the parties returned to the hearing. Ms Veccia told the tribunal that the respondents had had a chance to look at the case and they did not need more time, at least at this stage. They were not 100% sure that the Court of Appeal judgment applied to them and they were not sure if their legal advisers were aware of the case.

14. Ms Veccia said that when the respondents had bought their lease there had been no sinking fund. They strongly opposed the landlord company setting up a sinking fund now, partly due to the cost which they thought was unreasonable and partly because they feared it would make their flat less attractive to prospective purchasers.

15. In any event, they had received advice that in any service charge year the maximum provision for advance payment was £25.

16. At the end of the hearing, the tribunal gave directions to the parties to enable them to take legal advice and to make written submissions to the tribunal on whether the lease to the ground floor flat entitles the landlord to establish and maintain a reserve/sinking fund, in the light of the *St Mary's Mansions* decision. A letter was sent to the parties immediately after the hearing confirming that the respondents had until 22 October 2018 to make their submissions, copying them to Mr Smulders and Ms Kristiansen, who then had until 12 November 2018 to make their submissions to the tribunal, copying them to the respondents.

17. The respondents made submissions by email dated 9 October 2018. While they did not address the central question as to whether the landlord *is entitled* to establish and maintain a reserve fund under the lease to their flat, in the light of the *St Mary's Mansions* decision, they did "fully accept that we should contribute to a sinking fund."

18. They went on to say: "We believe there is no need to seek further advice, as we fully understand the advantages of building a pot of money that will solely be used towards the next major works planned for 2024. The separation of the service charge demand for major works and a separate bank account to hold the money in trust, seems to us a reassuring option when compared the one currently set up." They also sought more transparency from the applicant, access to all the applicant's documents (past and future) and the ability to attend meetings with the managing agent, including the one for the yearly budget, with a view to rebuilding trust.

19. The applicant made no further submissions.

The tribunal's decision

20. The tribunal determines that the wording of the lease entitles the landlord to establish and maintain a sinking fund in respect of anticipated future expenditure on major works.

Reasons for the tribunal's decision

21. Clause 2(2)(a) of the lease is the lessee's covenant with the lessor [173]:

> "To pay and contribute to the Lessor by way of further rent a service charge equal to 25.35 per cent of the expenses..." [which are later defined].

22. The mechanism by which the service charge is to be demanded is set out in clause 2(2)(b) and, for convenience, the relevant parts of this clause are set out in full below [174-176]:

> "(i) The amount of the service charge and other charges hereinbefore covenanted to be paid shall be ascertained and certified by a certificate (hereinafter called "the certificate") signed by the Lessor's Auditors or Accountants (at the discretion of the Lessor) acting as experts and not as arbitrators annually and so soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in [the] manner hereinafter mentioned
>
> (ii) The expression "the Lessor's financial year" shall mean the period from the 1st day of April in each year to the 31st day of March of the next year or such other annual period as the Lessor may in its discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the said Building shall be made up.

(iii) A copy of the Certificate for each such financial year shall be supplied by the Lessor to the Lessee on written request and without charge to the Lessee

(iv) The certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessor during the Lessor's financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge and other charges hereinbefore covenanted to be paid and the certificate (or a copy thereof duly certified by the person by whom the same was given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify

(v) The expression "the expenses and outgoings incurred by the Lessor" as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and relates pro rata to the demised premises

(vi) The Lessee shall with every half yearly payment of rent reserved hereunder pay to the Lessor the sum of £25.00 or such other sum as the Lessor or its Managing Agents may determine in advance and on account of the service charge and in default of payment thereof such sum shall be recoverable as if the same were rent in arrear

(vii) As soon as practicable after the signature of the certificate the Lessor shall furnish to the Lessee on [an] account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Lessor the amount of the service charge as aforesaid or any balance found payable or they shall be allowed by the Lessor to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may require

(viii) [...]".

23. The above terms in the respondents' lease are identical to the lease terms considered by the Court of Appeal in the *St Mary's Mansions* decision, save that the court was dealing with a clause 2(2)(c), rather than a clause 2(2)(b) in

the present lease. However, the sub-clauses are the same. The Court of Appeal deals with sub-clauses (i) to (iv) in paragraph 18 of its decision; sub-clause (v) is quoted verbatim in paragraph 19; sub-clause (vi) is dealt with in paragraph 20; and sub-clause (vii) is recited in full at paragraph 21.

24. On the facts of the *St Mary's Mansions* case, the landlord had set up a reserve fund for future special projects, such as major works and had a five-year plan prepared to raise the necessary funds for these. At paragraph 33 of its decision, the Court of Appeal asked whether the landlord was entitled on these lease terms to establish and maintain a reserve fund and the answer in paragraph 34 was an unequivocal "Yes".

25. The meaning of sub-clause (v) was that the landlord's annual expenditure "was deemed to include not only expenditure actually incurred but also such reasonable part of the expenses of the periodically recurring nature, including sums by way of reasonable provision for anticipated expenditure, as the lessor or its accountant or managing agent allocate to the year in question as being fair and reasonable."

26. The Court used the term "reserve fund" interchangeably with the term "sinking fund", stating that the anticipated expenditure could cover "expenditure of a recurring nature, for example, a sinking fund to provide every five years for the repairs to external doors and windows and the redecoration of the building, or to make longer-term provision for the greater expenditure that fortunately recurs less frequency, such as the judge's example of replacing the slates on the roof."

27. The Court of Appeal went on to say, at paragraph 35 of its decision: "So the question is not whether the landlord can do it, but, rather, how the landlord must do it."

28. The tribunal will deal with the process of demanding sums for the reserve fund/sinking fund, and the amount of such demands, later in this decision. However, at this stage, it is sufficient to state that there is Court of Appeal authority on lease terms that are identical to those in the respondents' lease, to say that those terms entitle the landlord to establish and maintain a reserve fund or sinking fund. The tribunal is bound by that decision and, therefore, concludes without hesitation that the respondents' lease allows the applicant landlord also to establish and maintain a sinking fund.

29. Contrary to the fears expressed by the respondents at the hearing, the existence of a proper and well-funded sinking fund is more likely to be an attraction to prospective purchasers rather than a deterrent, for prospective purchasers will know that adequate provision is made for the future maintenance and repair of the building in which the flat is situated and of which they are to acquire one share in the freehold company. As mentioned above, in their post-hearing submissions the respondents now accept that they should contribute to a sinking fund.

The 2017-18 service charge

30. The hearing bundle contained a 10-year service charge budget between 2017 and 2027 [13], which indicated that the applicant landlord had allocated some £6,400 per annum towards the sinking fund. Details of the anticipated major works expenditure were set out in the 10-year plan for the sinking fund budget [14), of which the greatest anticipated expenditure was £57,000 for external decorations in Year 8 (2024-2025).

31. The 10-year service charge budget also contained estimated costs for general building repairs/works, electricity, accountancy fees, management services, bank charges, health and safety assessments and buildings insurance. The budget amount for all such charges for 2017-2018 was £11,521 for the whole Building. The actual expenditure for that period varied to some degree between individual heads [70] but, nonetheless, still came to a total expenditure of £11,521.02.

32. The respondents challenged both the amount of the sinking fund allocation and certain of the actual expenses for the service charge year. The tribunal will deal with the amount of the sinking fund allocation first, as the applicant has budgeted to recover the same amount, £6,400 per annum, for each of the service charge years to February 2027.

The sinking fund

33. When dealing with the sums claimed in respect of the sinking fund, the first question is whether the amount of the sinking fund allocation is reasonable. The second question is whether the correct procedure has been followed, so that it is payable.

Amount of the sinking fund allocation

34. The respondents attacked the proposed amount of the sinking fund on several fronts. First, they claimed that the lease only allowed the landlord to demand £25 per annum in respect of anticipated expenses. Then they said that there was no need for the sinking fund to be built up over 10 years. They asked why matters could not be left as they were and two years before works were needed, a chartered surveyor could be appointed to check the amount of the anticipated expenditure and a sinking fund could be built up then. Much the same had happened in 2014, when all the leaseholders had contributed to a major works fund for roof repairs.

35. The respondents also expressed no confidence in the applicant - by which they meant the company directors, Mr Smulders and Ms Kristiansen - holding and protecting their money safely, expressing fears as to what would happen to the money if the applicant parted company with the managing agents, Urang. They complained about a lack of transparency, not having seen the bank statements for the service charge account as it was. If (which was not entirely

accepted) the lease did allow there to be a sinking fund, the annual sums claimed were too high: at first, the respondents proposed that the sinking fund allocation should only be £2,000 per annum, building up to £20,000 in 10 years, at which point the fund could be topped up. Then, they suggested that perhaps the payments could be staggered, starting at £2,000 per annum and then increasing in two or three years' time to £3,000, then £4,000 per annum, with the leaseholders topping up the sinking fund after six or seven years, if need be.

36. The respondents also challenged the assumption that the stated goal of collecting £57,000 for external decorations in Year 8 was reasonable. That figure did not include inflation or VAT and it was at odds with the amounts estimated by the surveyor consulted by the applicant, Mr Paice, as being necessary for future external redecorations and other works to the building [45].

37. Either way, they wanted any sinking fund to be kept in a separate bank account and for them to have access to bank statements.

The tribunal's decision on the sinking fund allocation

38. The tribunal determines that in respect of the service charge years 2017-18, and for subsequent years to 2027-28, the proposed sum of £6,400 per annum allocated to the sinking fund is reasonable and the respondents' 25.35% share, £1,622.40, is payable by them.

Reasons for the tribunal's decision on the sinking fund allocation

39. The starting point is to consider whether the goal of accumulating £64,000 over 10 years is a reasonable one. The strategy and methodology employed by the applicant for arriving at the £6,400 per annum for the sinking found was found at paragraph 2.4 of the applicant's statement of case [41]. The 10-year plan has been prepared by the managing agents, Urang. They had taken the costs of the major works in 2014 that had been found reasonable by the First-tier Tribunal in an earlier decision, and made an assumption that similar sums would be payable over the next 10 years.

40. The applicant approached Mr Robin Paice, a surveyor with RR Paice and Co, who managed the major works in 2014, to review Urang's assumptions [43]. He concluded that larger sums of money should be collected over a shorter period of time so that £12,184 per annum should be collected from leaseholders, over seven years. Part of the reason why his figure was higher, was because it included provision for inflation and VAT.

41. There was some confusion in the respondents' minds, when they sought to say that the figures proffered by Mr Paice were preferable to those proposed by Urang, since the latter were clearly lower than the former. Urang's assumptions were that the costs of external redecoration and repairs in eight

years' time would be £57,000, internal redecoration would cost £1,000, roofing £8,000, health and safety £1,000 and damp-proofing £3,000.

42. Given the breadth of the anticipated major works over the next 10 years, the tribunal is satisfied that an overall goal of raising £64,000 is justified; and, indeed, it is likely to be considerably less than the eventual cost of works, so that future top-up payments will still be needed. However, it does suggest to the tribunal that the annual allocation of £6,400 for the sinking fund is a reasonable one.

43. With regard to the respondents' claim that there was a limit of £25 on advance service charge demands, this is not correct. The tribunal referred the parties to clause 2(2)(b)(vi) of the lease [175], which stated that [with emphasis added]:

> "The Lessee shall with every half yearly payment of rent reserved hereunder pay to the Lessor the sum of £25.00 or such other sum as the Lessor or its Managing Agents may determine in advance and on account of the service charge and in default of payment thereof such sum shall be recoverable as if the same were rent in arrear"

44. The express terms of the clause gave the lessor or its managing agents discretion to demand advance charges higher than £25 every six months; and their discretion is subject only to the tribunal's power to determine whether the amounts demanded were reasonable, or not.

45. At the hearing, Mr Smulders and Ms Kristiansen very reluctantly acquiesced with the respondents' suggestion that there could be staggered payments of sinking fund contributions over 7 to 8 years, but only did so if it could be shown that the sinking fund would reach the same reasonable amount at the end of the 10-year period.

46. However, while lower annual payments would be easier for the leaseholders at the beginning of the 10-year plan, there is a real risk that, at the end of 10 years, the sinking fund will fall far short of its goal of covering the bulk of the future major works costs, which would negate its very purpose. The tribunal can see that staggered payments would have their attractions, but in terms of the mechanics of collecting sinking fund contributions, it would be much easier and clearer to have the same fixed sum each year.

47. The respondent's 25.35% share of the proposed £6,400 sinking fund contribution is £1,622.40 per annum. It should be remembered that Mr Smulders and Ms Kristiansen, as leaseholders of the other two flats in the Building, will have to bear and pay 74.65% of the sinking fund contribution, namely £4,770.60 per annum. So long as the sinking fund is kept in a separate bank account and copies of the bank statements are provided to the respondents - both of which Mr Smulders and Ms Kristiansen have agreed to do - the respondents should have every confidence that the sums paid will be properly protected and accounted for.

48. It is for these reasons, the tribunal confirms that, in principle, the proposed sum of £6,400 per annum allocated to the sinking fund is reasonable.

Payability of the sinking fund allocation

49. Turning now to the issue of payability, the lease sets out the procedures that need to be followed by the landlord in order that a reserve fund or sinking fund can be established. Reference needs to be made once again to the Court of Appeal judgment in *St Mary's Mansions*. Paragraphs 20 and 35 to 39 of that judgment set out the procedures that a landlord must follow in order that a reserve fund or sinking fund can be established.

50. In short, the judgment mentions three documents in the scheme of the lease: a "statement" of the interim service charge that will become due; followed by a "certificate" of the expenses and outgoings incurred and an "account" of the service charge payable by the lessee.

51. Of the three documents, it is the certificate and the account which are crucial to establishing an entitlement to establish a sinking fund. At paragraph 38 of the decision, Ward LJ giving the lead judgment, said: "Upon a proper construction of (vii), it seems to me that the scheme envisages two separate documents produced at different times: the one being the auditor's certificate and the later one being the lessor's account, even if, as I would hold possible, the lessor is able to adopt accounts prepared by its auditor."

Practice at the Building

The "statement"

52. In the present case, the landlord's financial year runs from 1 April to 31 March. Before any interim charge becomes payable on 29th September and 25th March in any year, the landlord should deliver a "statement" to the leaseholder of the amount that will become payable on such dates (as per paragraphs 20 and 35 of *St Mary's Mansions*). An example of such a statement would be a budget of expenditure for the forthcoming year, prepared by the landlord's managing agents, Urang. In that budget, Urang have made an assessment of the amount that the landlord should allocate to each year for future anticipated expenditure, i.e. to the sinking fund.

53. Such a statement "may be a usual step for the landlord to take, but it may not be an essential step" in the scheme of the lease (paragraph 35 of *St Mary's Mansions*), as there are later opportunities for the landlord to recover its expenses and outgoings.

The "certificate"

54. As soon as practicable after 31 March, a "certificate" must be prepared, containing a summary of the landlord's expenses and outgoings incurred in the previous year, giving relevant details and figures; and this must be signed by the landlord's auditors or accountants. That certificate also includes the amount allocated by the landlord as being reasonable provision for anticipated expenditure in respect of costs of a periodically recurring nature (i.e. amount allocated to the reserve or sinking fund). As paragraph 36 of *St Mary's Mansions* puts it: "In other words the landlord makes the allocation and the auditors acting as experts certify it to be reasonable provision."

55. That certificate does not necessarily have to be given to the lessee, but it must be supplied if the lessee makes a written request. However, in practice, at the Building, the "certificate" is the Leaseholder Accounts for the year, produced and signed by the landlord's accountants, M E Ball & Associates Limited [e.g. at 65-76], and supplied to the respondents. The Leaseholder Accounts contain details of the landlord's expenses and outgoings, including the amount allocated in the year to the reserve fund (i.e. the amount that Urang allocated as reasonable provision for anticipated expenditure).

The "account"

56. As soon as practicable after the signature of the certificate, the landlord must then furnish to the lessee the second document, namely an "account" of the service charge payable by the lessee for the year that has passed (see paragraph 37 of *St Mary's Mansions*).

57. At this point, credit is given to the lessee for any interim service charge payments made on the previous 29th September and 25th March. Adjustments are made as appropriate and the lessee shall pay any shortfall; but any surplus in respect of the expenses will outgoings actually paid has then to be "allowed by the lessor to the lessee" (paragraph 37 of *St Mary's Mansions*). This may be by way of a repayment or placing the amount to the lessee's credit in the account, to be set off against the demands to be made in the next year.

58. In this case, the "account" is the Account Statement [e.g. 208-211], which is a running account of interim service charge demands, payments made and a running balance, against which end of year adjustments can be made.

59. The Court of Appeal stated at paragraph 39 of its decision that "If that procedure is followed, a reserve fund can be established." In the tribunal's opinion, the applicant landlord company *has* followed requisite procedures under the lease to budget for, certify and account for expenditure in the 2017-2018 service charge year. Having followed the appropriate procedure, a reserve fund can be established and the amount budgeted or allocated to the reserve fund in 2017-18 is therefore payable by the respondents.

60. As advance notice has been given of the amounts allocated to the sinking fund in the following 10 years (i.e. in the service charge budget 2017-2027 [13]), it follows that the sinking fund contributions sought in those years will also be payable by the respondents, so long as the lease provisions for annual certification by the applicant's accountants and accounting by regular Account Statements continue to be followed.

61. However, as agreed by Ms Kristiansen and Mr Smulders at the hearing, it is a further condition that the applicant sets up a dedicated sinking fund bank account and provides to the respondents regular copies of bank statements to both that account and the general service charge account.

Amount of the general service charges in 2017-18

62. Apart from the amount allocated to the sinking fund, the landlord's day-to-day expenses and outgoings for 2017-18 are also set out in the hearing bundle [70, 93 and 152].

The tribunal's decision

63. The tribunal determines that in respect of 2017-18 service charge the sum of £3,113.38 is reasonable and payable by the respondents. A table of the sums claimed and allowed for 2017-18 is attached to the end of this decision.

Reasons for the tribunal's decision

64. The respondents' disputes in relation to the expenditure for 2017-18 are summarised in their annotated schedule in the hearing bundle [152]. There were six items which fell under the general heading of "maintenance", together with a challenge to Urang's management fees. The tribunal went through each of those expenses with the parties; and their comments and the tribunal's conclusions on them are as follows.

(i) Invoice 141972 to London Damp Specialists, £2,820.00

65. This related to an invoice dated 1 April 2017 for damp proofing and skimming, and wood treatment [78]. The respondents complained that the applicant had not carried out a statutory consultation under section 20 of the Landlord and Tenant Act 1985 and, therefore, the whole invoice should be reduced to £250, of which their 25.35% share would be £63.38.

66. Mr Smulders accepted that the freeholder had not carried out a section 20 consultation for these works. Consequently, the applicant had only charged each leaseholder £250 per flat. The respondents had not been charged the full share of the total cost, but that expense had been born by Mr Smulders and Ms Kristiansen, themselves.

67. The tribunal noted the concession and confirmed that, absent a statutory consultation under section 20 or any subsequent successful application for dispensation under section 20ZA of the Act, the landlord was limited to charging each contributing flat the sum of £250 - not £250 for the whole building, as the respondents submitted.

68. Had the full cost been charged by the landlord, the respondents' 25.35% share would have been £714.87. However, the effect of there having been no statutory consultation is to limit the individual contribution of each leaseholder to £250. This is therefore the amount which is payable by the respondents in respect of this work.

(ii) Invoice #5199 for a health and safety review, £180

69. The respondents challenged this item of expenditure on the grounds that there was no need for a yearly health and safety inspection for the hallway of the Building, which they said measured 2m x 8m and which contained only one light bulb, a fuse box and locks on doors.

70. The invoice in respect of this came from Urang [79]. Mr Smulders said that he assumed that the managing agents were complying with statutory requirements when they carried out a health and safety review. This sparked one of several confrontations during the hearing, where both parties expressed dissatisfaction with their managing agents; neither really understanding what the charges were for and prompting Ms Veccia and Mr Sparapassi to say that the problem lay with Mr Smulders and Ms Kristiansen, who were failing "to manage" the managing agents.

71. Mr Smulders said that the managing agents had been appointed in the first place in 2010 because of disputes between the two sides; that the managing agents were appointed as independent managers to try and remove the friction between the parties; and that the 2014 tribunal had advised Mr Smulders and Ms Kristiansen "not to get involved in the management of the building". Mr Smulders said that whatever he did in relation to the management of building, the respondents would not be happy.

72. The tribunal notes that by clause 5(1) of the lease [181], the lessor covenants with the lessee to "maintain repair redecorate and renew" (amongst other things) the "electric cables and wires" and "the main entrance passages ... and steps ... of the Building so enjoyed or used by the Lessee or the lessees of the other flats". By clause 5(2), the lessor covenants "Subject as aforesaid and so far as practicable to keep clean and reasonably lighted and in good repair and condition the passages landings staircase and other parts of the said Building so enjoyed or used by the Lessee in common as aforesaid."

73. It is quite unexceptional, in the tribunal's opinion, for a landlord or its managing agents to carry out a health and safety review of the common parts once a year, to comply with covenants in the lease. This benefits not only the lessees, but also any visitors to the flats or any workmen engaged by the landlord. Having entrusted the management of the building to an independent managing agent, it is not surprising that the managing agent carries out this function. An annual charge of £180 including VAT to do so is, again, unexceptional and, in the tribunal's view, reasonable and payable by the respondents in their percentage share.

(iii) Invoice #6041 EICR test & report on 9.9.2017, £240

74. The EICR (Electrical Installation Condition Report) testing was carried out on 9 September 2017 [85]. The respondents disputed this charge saying that an EICR test was not a legal requirement for homeowners, but only for landlords with tenants in any residential accommodation, because the Landlord and Tenant Act 1985 requires that the electrical installation in a rented property is safe at the start of any tenancy. The two flats owned by Mr Smulders and Ms Kristiansen are let to short-term tenants - the implication being that this was the reason why an EICR report had to be obtained.

75. The tribunal notes that the invoice relating to this expense records that the report undertaken on that date was "unsatisfactory", though it is not clear what work, if any, was undertaken to rectify the apparent problem.

76. The respondents relied upon a commercial website "EICRtesting" [URL at 152] to demonstrate that there was no legal requirement for homeowners to have an EICR test and report, but that the legal requirement was limited to rented properties. That may be so, but the same website sets out requirements on businesses to take suitable measures to prevent accidents to employees or workmen, under the Health and Safety at Work Act 1974 and the Electricity at Work Regulations 1989; and with regard to homeowners it states

that "it is sensible practice ... to check the safety of your electrics and help prevent any avoidable accidents from occurring."

77. It must be remembered that the EICR test and report were commissioned by Urang on behalf of the landlord, as owner of the Building and with responsibility for the common parts, where workmen may attend to carry out work. Furthermore, the landlord's covenants, as mentioned above [181] require the lessor to maintain and repair electrical cables and wires in the Building.

78. The invoice confirms that costs had been incurred by the managing agents and there was no evidence to say that the amount of those costs were unreasonable. For the reasons given above in respect of the health and safety review, the tribunal considers that these costs are properly payable under the lease, reasonable in amount and payable by the respondents in their percentage share.

(iv) Invoice for repairs to a balcony, £420

79. There was no dispute about the £420 invoice no.0328 raised by Essex and London Roofing Limited [90] for a temporary repair to a balcony; though, for information, this expense did not fall within the heading of "General Repairs and Maintenance" in the annual accounts for 2017-18, but rather as a separate item under the heading "Health and Safety" [70].

(v) Payment to London Drainage Facilities Ltd, £108

80. The £108 incurred by Mr Smulders to pay London Drainage Facilities Limited [91] was initially disputed by the respondents because there was no proper invoice but, after discussion, they changed their mind and accepted that they would pay their percentage share of this invoice.

(vi) Invoice DV 924448 in respect of blocked drains, £255

81. This was an invoice from Pimlico Plumbers [92], which the respondents claimed had been billed already in the 2017 accounts and was therefore duplication. After discussion, the applicant conceded that this was a duplicate invoice and therefore it was not payable by the respondents. In any event, this expense did not appear to be within the list of invoices for 2017-18 [93], nor within the heading of "General Repairs and Maintenance" in the annual accounts for that year [70].

Challenge to Urang's management fees

82. The respondents made no challenge to the total cost for communal electricity at £142.81, the independent accounts fee at £360.00, bank charges at £77.70

or the buildings insurance premium at £1,716.86. However, they did dispute the management fee charged by Urang at £1,650.00.

83. The respondents complained that the management fees had increased from £1,200 in the previous year to £1,650 in 2017-18. However, from their perspective, Urang was doing exactly the same, just paying the bills, and there was no justification for the increase in charges. Ms Veccia complained that Mr Smulders and Ms Kristiansen had failed to challenge Urang about the increase in fees, saying that if she were a director of the freehold company, she would have met Urang and questioned the increase.

84. Mr Smulders said that he could guess why the management fee had increased: Urang would say that Ms Veccia had had put a huge strain on the managers, with regard to all the information she constantly required to be produced and by not paying her service charge demands (an allegation that had surfaced in earlier emails in 2013 [194]).

85. This sparked off another confrontation about the circumstances in which Urang were appointed as independent managing agents in 2010, in the hope of removing management of the Building from the ongoing disputes between leaseholders, the comments of the 2014 tribunal that Mr Smulders should not become involved in management, allegations that the directors of the applicant company had failed "to manage" the managing agents and complaints as to how Ms Veccia would do things differently if she were a director of the freehold company (she alleging that she had been dismissed as a director unlawfully some years ago, in 2010 [117]).

86. Mr Smulders said that he had looked at appointing other managers, but they were difficult to find. Ms Veccia said that she had found someone who would charge £1,350; but, after further discussion during the hearing, there was no agreement between the parties that they should change the managing agents.

87. The tribunal considers that the management fee charged by Urang for a property of this type, comprising three leasehold flats in one terraced building, could be regarded as being on the high side. However, the constant disputes throughout the hearing demonstrated how little agreement there was between the parties about the running of the Building; and it is clear that their mutual suspicion and distrust, and lack of cooperation, have been ongoing now for the past 8 years, if not longer. Constant disputes about service charges and the respondents' reluctance to pay them, all add to the time, effort and cost of managing a building, which inevitably will be higher than normal than in a building where the parties are not feuding. Even on Ms Veccia's evidence, the cost of a replacement managing agent would be £1,350. The current charge of £1,650 is not excessively more, given the management problems in the Building.

88. The respondents' share of the management fee is £418.28 per annum, which the tribunal considers, in the circumstances of the case, is not an excessive amount for the respondents to pay.

Summary

89. A table of the sums claimed in 2017-18 and allowed by the tribunal is attached to the end of this decision.

The proposed budget figures for the next 10 years

90. The future years' anticipated expenditure is set out in the service charge budget 2017-2027 [13]. This anticipates that some costs will decrease slightly and other costs will increase slightly (for example, it is anticipated that the management fee may increase to £1,750 per annum), but, overall, the total for the Building for 2018-19 onwards is set at an amount, £11,214, which is lower than the actual costs for 2017-18 at £11,521, largely approved by the tribunal.

91. Therefore, the tribunal has no hesitation in saying that the budget for anticipated costs up to and including the 2026-27 service charge year are reasonable and may form the basis of interim service charge demands to leaseholders, in their respective percentages, from now on.

Refunds of unspent funds in previous years

92. The final issue was whether the respondents were entitled to any refunds in respect of monies that they had previously paid towards service charges. Ms Veccia's starting point was the summary of assets and liabilities [206], which stated that the reserve fund on 24 March 2018 was £10,910.24 and the respondents' share was £2,765.75. The respondents wanted that sum refunded to them. They also sought a refund of the £3,263.20, which they had paid to the applicant but was left over from the 2014 roof works [112-113].

93. Mr Smulders explained that the cash at bank was only £8,171.61. The reserve fund could only be said to be £10,910.24, if the respondents paid the £3,098.63, which he said they owed but had not yet paid.

The tribunal's decision

94. The tribunal has insufficient evidence to determine whether the respondents are owed anything by the applicant in respect of unspent monies from the 2014 major works, or in respect of any other funds received or held by the applicant.

Reasons for the tribunal's decision

95. The tribunal looked at various documents in the hearing bundle, including the printout from the freeholder's HSBC business current account [239-247] which contained all incoming and outgoing entries in the account, since its inception on 22 September 2010, up to 11 September 2018, and the printout for the 2014 major works account (now closed), since its inception on 29

January 2014, up to 11 December 2015 [248]. From these, it was possible to see that at the end of 2014 works, the sum of £3,263.20 had not been spent and it was transferred into the applicant freeholder's main account on 11 December 2015 [also see 113].

96. The tribunal understood Mr Smulders to say that that sum, £3,263.20, was potentially to be refunded to the leaseholders in their percentage shares under their leases. If correct, it seems that the respondents were due to receive a refund of £827.22. The respondents denied having received a refund of this amount; and Mr Smulders and Ms Kristiansen also said that they had not received a refund in respect of their share of the transferred balance.

97. What was unclear was whether the respondents have received a credit to the tune of £827.22, in lieu of an actual refund.

98. Ms Veccia complained that it was virtually impossible to know how much they had paid and what they were owed. However, it seemed clear to the tribunal that the respondents had all the information that they needed to work this out. They had complete printouts of the freeholder's two bank accounts, showing all entries; numerous bank statements; their own account statements from Urang, showing how much they had actually been charged and paid in each period (for example see [208-209]); plus copy invoices in support of expenditure; and audited, certified annual accounts. They also know how much they had actually paid to the applicant in recent years.

99. Having explored this as far as the tribunal was able, we found it impossible to form any view about whether the respondents had overpaid or underpaid service charges, whether they were due any refunds, or whether they had received refunds or credits of sums that were due to them.

100. The respondents were asking the tribunal to carry out an accounting exercise on their behalf, which it has neither the time nor the resources to do; and which, in any event, goes beyond its task of determining whether service charges are reasonable and payable. It is for the respondents to analyse all the documents available to them. There would appear to be full transparency of the applicant's financial transactions; and the annual accounts have been approved and certified by a chartered accountant. If the respondents are not satisfied that the accounts represent a true reflection of the applicant's financial transactions and if they believe, but cannot show, that they are owed money (rather than owing it to the applicant, which seems equally possible, if not even more likely), then they may wish to consider employing an accountant to carry out their own audit of the company's finances. Perhaps only that will allay their suspicions and mistrust.

101. If, however, they *can* demonstrate an entitlement to monies, or any accounting error, then the first step is to raise that with Mr Smulders and Ms Kristiansen and/or Urang, to try and resolve the matter. If they cannot resolve the matter informally, they must take their own legal advice before embarking on litigation before the tribunal or (perhaps more likely) the court to recover

monies that are due. There is a very serious risk that the time, effort and expense of doing so will outweigh the sums in dispute.

102. The tribunal therefore makes no finding in relation to any claim that the respondents are entitled to a reimbursement of monies, basically because the respondents have not made out a comprehensible case that would point to such an entitlement.

Reimbursement of fees

103. The tribunal judge at the case management hearing on 21 June 2018 identified that the one issue to be dealt with at the eventual hearing was the question of reimbursement of fees.

104. Given the determinations above, substantially in the applicant's favour, the tribunal orders the respondents to refund to the applicant the sum of £300, in respect of tribunal issue and hearing fees incurred by the applicant, within 28 days of the date of this decision.

Conclusion

105. There is significant distrust between the parties. Transparency and communication would appear to be all-important for the future. If the respondents are not satisfied with the management of the building, especially the financial aspects, they will need to seek advice from outside independent sources as to how matters can be improved.

Name: Timothy Powell **Date:** 11 December 2018

Attachment: Table of sums claimed against the respondents in respect of their flat and the amounts allowed by the tribunal.

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).

Table of sums claimed against
Ms Antonella Veccia & Mr Paolo Sparapassi
in the service charge year 2017-18
in respect of the
Ground Floor Flat, 44 Charleville Road, London W14 9JH
and the amounts allowed by the tribunal

	Date	Description	Amount claimed £	Amount payable £	Comment
1.	1.4.17	London Damp Specialists (£750 in the accounts)	2,820.00	250.00	Section 20 limit
2.	5.5.17	Health & safety review	180.00	45.63	25.35%
3.	21.9.17	EICR test & report	240.00	60.84	25.35%
6.	6.10.17	London Drainage Facilities	108.00	27.38	25.35%
7.	18.11.18	Pimlico Plumbers	255.00	0.00	Duplication, conceded
8.	23.2.18	Health & safety - balcony repair	420.00	106.47	25.35%
9.	Various	Electricity	142.81	36.20	25.35%
10.	16.4.18	Accountants	360.00	91.26	25.35%
11.		Bank charges [70]	77.70	19.70	25.35%
12.	Various	Management fees	1,650.00	418.28	25.35%
13.	Various	Insurance	1,716.86	435.22	25.35%
14.		Reserve fund	6,400.00	1,622.40	25.35%
		TOTAL:	**14,370.37**	**3,113.38**	