FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00HB/LSC/2018/0109**
Properties	**:**	**Eight residential flats at 20, 22 and 24 Gloucester Road, Bristol BS7 8AE**
Applicants	**:**	**The eight residential tenants, and the Resident's Association, of 20 - 24 Gloucester Rd**
Applicant's Representatives	**:**	**Wendy McGuinness, Flat 20B** ***Assisted by:*** **Christine Janaway**
Respondent	**:**	**Adriatic Land 1 (GR3) Ltd**
Representative	**:**	**Rebecca Ackerley of Counsel** **Instructed by JB Leitch, Solicitors**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Professor David Clarke** **Michael Ayres FRICS** **Michael Jenkinson**
Dated	**:**	**30 December 2019**

DETERMINATION AND STATEMENT OF REASONS

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DETERMINATION

The Tribunal determines that the following items are to be removed, or reduced, from the relevant charges in the service charge accounts:

(A) ***Items conceded by the Respondent on the first hearing day***
1. A £40 late payment charge for delay by the utility provider – reference 7.2.10b.£180 charge to install a metal plate as no evidence it was done - reference 7.2.4f.
2. A £180 charge to install a steel plate, a duplicate charge.
3. A £321.60 charge conceded as a double or unnecessary charge – reference 7.2.4e.
4. £4,122.75 charge described as fire defences works which was conceded prior to the hearing and a refund confirmed.
5. Three charges of £55, total £165, which were monthly ground maintenance fees, conceded as double charges – reference 7.2.8b, 8d, and 8f.
6. A £187 charge by potential contractors for diagnosis of a problem, the Respondent noting that to charge for this item was most unusual.
7. A £71 for installation of a key safe claimed to be unnecessary as the work replaced one done only two months previously.

(B) ***Items determined as unreasonable***
8. £600 referenced for the retail unit 24A Gloucester Road.
9. £549 of legal costs incurred by the Respondent in pursuing the cost indemnity from the RTM company.
10. An invoice charge of £660 (£550 plus VAT) dated 12.12.17 for treating all steps and paths with weed killer.
11. A sum of £403 out of £4,823 for historic charges cannot be supported by evidence and should be refunded.
12. The charge of £354, reference 7.2.4j, for an investigative report was not a reasonable charge.

(C) ***Items determined as unreasonable from the Supplementary Schedule***
13. A total cost of £3,545.56 being 20 invoices by N Power for communal electricity over a considerable period.
14. A duplicate invoice for £300 for the fitting of 'keep fire door shut' signs.
15. A charge for electricity to the supply to the common parts of £1,440.
16. One half of the total of handover fees of £570, namely £285.

(D) ***Reduction in Management fees***
A total of £3,050 to be repaid in respect management fees of former agents:
17. One half of the management fees charged in the financial year ending 31 December 2015 amounting (rounded down) to £750 (one half of £1,513, the figure in the accounts) should be refunded.
18. One half the management fees charged in the year ending 31 December 2014, namely £1,200, one half of £2,400, should be refunded.

19. One half or £550 of the £1,100 listed as 'management fees of old agents' in the accounts for the period ending 31 March 2017 should be refunded.
20. £1,100 of management fees of the old agents charged in the accounts for the 15 months to 31 March 2017 should be reduced by 50%, to £550.

20. A total of £1,332 of management fees of the current agent should be refunded to the service charge this being 25% of the £3,679 management fees for the fifteen months to 31 March 2017 (£920) and 25% of £1,650 of those for the year to 31 March 2018 (£412).

(E) ***In respect of the section 20C application***
21. The Tribunal determines that an order should be made in favour of the Applicant under section 20C of the Landlord and Tenant Act 1985 in respect of all the costs incurred by the Respondent in connection with these proceedings. Such costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Lessees, being the persons on whose behalf this application is made.

STATEMENT OF REASONS

The Application

1. This application ("the Application") was made on 27 November 2018 by Wendy McGuinness as Chairperson of the recognised Tenant's Association at the properties collectively known as 20, 22 and 24 Gloucester Road, Bishopston, Bristol ("the Properties") and thereby on behalf of herself as one of the leaseholders in the Properties and the other current leaseholders of the residential flats and maisonettes. In this determination, the term "the Applicants" will be used to include all such residential leaseholders.

2. The Respondent to the Application is Adriatic Land 1 (GR3) Ltd, a company who purchased the freehold of the Properties in 2017. Its immediate predecessor was a company in the same group, namely Adriatic Land 1 (GR4) Ltd, who had purchased the Properties in 2010. This company, the Tribunal was told, has now been liquidated. However, Ms Rebecca Ackerly, counsel for the Respondent, Adriatic Land 1 (GR3) Ltd, informed the Tribunal that her client would speak to all issues before the Tribunal and, to the Respondent's credit, accept the Tribunal's determination in so far as it related to the period of time when Adriatic Land 1 (GR4) Ltd was the freeholder. The Tribunal is thus able to use the term "the Respondent" from now on in this determination to refer to both companies, depending on the time in question.

3. The Application relates to the eight residential units in the Properties. Four of these are in number 20, a large semi-detached building on four floors and they are known as the Basement flat, 20A, 20B and Flat 3 respectively. It is linked as a building to number 18 Gloucester Road which is not part of this application. Numbers 22 and 24 Gloucester Road are one building comprising two semi-detached houses, again on four floors. Number 22 has two flats or maisonettes, known as 22A and 22B; the two in number 24 are known as 24B and 24C. The entire frontage of all three properties consists of retail units, as more fully described below, which are not the subject of the Application but do have an impact on the issues raised.

4. The details of the Applicant residential leaseholders are as follows:
Miriam Bishop and David Lovelock, Basement Flat, Number 20
Terry Olpin, who is leaseholder of two flats, 20A and 20B
Craig and Wendy McGuiness, Flat 3, Number 20
Laura Manning and Mark Seberry, 22A
John and Linda Dixon, 22B
Tim Dee, 24B
Alessandro Giazotto and Stepania Pulcini, 24C.

5. The Application seeks a determination of the reasonableness of service charges in relation to the Properties for the six years 2013-2018 and for the current and future years 2018-2023. At the hearing, no issue was raised beyond the current year 2019. The Application included applications under section 20C of the Landlord and Tenant Act 1985 ("the Act") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

6. Although some leaseholders have owned their properties throughout the period at issue (2013-2018), the Respondent pointed out that some leaseholders have purchased during that time. This determination only relates to the leaseholders listed in paragraph 4 above for the period during which they were leaseholders and not in relation to earlier periods before they purchased.

Background to the Application

7. The background to this Application shows a history of concerns by the leaseholders about the quality and competence of the management of the Properties over at least seven years. Mrs McGuinness and her husband purchased the top floor flat in number 20 Gloucester Road in 2010 and the Application and supporting documentation raises issues from 2013 onwards. Indeed, there is also background information on the problems said to have been encountered in 2012 providing some additional information for the Tribunal. The detail of the issues between the parties will be discussed in due course.

8. There has been a previous application to the Tribunal in relation to the Properties, which was made under the 2002 Act whereby the leaseholders applied to take over management of the Properties through a Right to Manage Company. This application had to be withdrawn when it became apparent that the retail areas of the Properties comprised about 27% of the whole and therefore above the 25% threshold for an application by a Right to Manage Company to be made. No further details of this matter were before the Tribunal but there is an issue to be determined concerning the inclusion within the service charge of costs relating to that application.

9. After the Application was made on 27 November 2018, the parties did attempt to resolve the issues through the Tribunal's offer of mediation. The mediation meeting was held on 14 March 2019 and the proceedings then stayed until 1 August 2019 in order for the parties to exchange Scott Schedules and hold a round table meeting. No further details of that mediation attempt were before the Tribunal or mentioned at the hearing. The conditions of the stay not having been complied with, Directions were issued by Judge Tildesley on 1 August 2019.

10. The Directions provided for an inspection of the Properties; for the Application and documents filed to stand as the Applicants' case; for the Respondent to file its copy documents, witness statement and a statement of case; for a brief reply; and for a hearing on 16 September 2019. Two large lever arch files of documents were prepared by the Applicants as directed and the Tribunal gratefully notes that these were of high quality.

11. It was not possible to conclude the hearing in one day; in particular, the Respondent was unable to answer some questions on behalf of the Tribunal put to the Respondent's counsel. It was clear that further information was required and more time was needed. The hearing on 16 September therefore had to be adjourned at the end of that day. Further Directions were issued to secure the further information required; and an additional two large lever arch files of documentation, invoices, witness statements and submissions were before the Tribunal when the hearing was resumed on 19 November 2019.

12. Though the case at both hearing days was presented by Rebecca Ackerley of Counsel representing the Respondent, the witnesses, who had provided witness statements supplemented by oral evidence at the hearing, were from the Respondent's current managing agents. Since one focus at the hearing was on the inadequacy of management, it will be helpful to set out the history of the managing agents over the period in dispute.

13. The Respondent, as a property investment company, does not, as is standard practice in the industry, manage the Properties directly. What is less usual is that there is a two tier management structure. Throughout the period at issue, the Respondent has instructed Forte Freehold Management Ltd ("Forte"), a company based in Newcastle-upon-Tyne, as its agent to receive the income from the Properties and the insurance rents which it, no doubt, accounts for to the Respondent. But notwithstanding the word 'Management' in its name, Forte does not exercise any day-to-day management functions, at least, not in respect of the Properties. The Managing Director of Forte is Diane Fletcher and she provided witness statements and was present on both hearing days to give additional information orally.

14. The actual management is currently delegated by Forte to a company known as Residential Management Group Ltd ("RMG"), whose registered office is in Hertfordshire. Andrew Davis, a regional manager with RMG based in Birmingham, provided witness statements and was also present to provide supplementary oral evidence at both hearing days. RMG took on the management of the Properties in 2016.

15. Prior to 2016, there were no less than three different managing agents, each appointed and either then dismissed by Forte, or resigned, in a period of a little over three years. From about 2011 until October 2014, the agents were Haus Block ("Haus"), previously known as Newspace, a firm based in London. The Respondents accepted that that firm did not provide appropriate management; indeed some £6,600 of management fees were refunded by Haus after they ceased to manage. They were succeeded by a firm called BNS Property Management ("BNS), based in Bristol; but by 21 August 2015, Ms Fletcher was telling Mrs McGuinness that Forte were very unhappy with the management by BNS. They were dismissed in that month and replaced by Dickinson Harrison RBM, trading as Hunters ("Hunters"). That firm only acted as manager for one year and, after further complaints about management issues, were also dismissed. It may be noted that Mrs McGuinness avers that during the period of 4 different managing agents there have been no less than 15 individuals with the prime responsibility for the Properties.

Inspection of the properties

16. The Tribunal inspected the three properties on 16 September 2019, prior to the first day's hearing and were accompanied by the parties' representatives.

17. The Properties with which this case is concerned comprise three substantial Victorian or Edwardian villas fronting Gloucester Road, in Bishopston, Bristol. This is a main thoroughfare (the A38) leading north from Bristol city centre and is a local 'High Street' of shops, comprising a variety of local businesses, national chain outlets, charity shops and cafes. Numbers 22 and 24 are one pair of semi-detached buildings while number 20 has an access that is linked with number 22; there is a separate access to number 24. The

other half of the pair with number 20, namely number 18, was once or still is, apparently, in the same freehold ownership and was once part of the same estate but has for some years been run by a Right to Manage Company and so does not concern the Tribunal.

18. Perhaps the houses once had front gardens; but they now consist of retail properties, built at a single storey level only, right up to the pavement in front of the houses which are of four stories. These retail properties straddle the internal boundaries of the houses themselves, so that numbers 24 and 22 have three retail shops in front of the two properties while number 20 has a large café-bar business which stretches right across in front of both numbers 20 and 18. It seems all of these retail properties go back, completely or to some extent, underneath the houses into what may have originally been the basements or ground floors but none of the retail premises makes use of any access at the back of the Properties – indeed, number 20 has a basement flat with access from the back preventing any access by the café-bar business.

19. The residential units in the three properties consist of four flats in number 20, known as Basement Flat, 20A, 20B and Flat 3, 20 Gloucester Road respectively; two flats or maisonettes in number 22, known as 22A and 22B; and two flats or maisonettes in number 24 known as 24B and 24C. There is no basement residential accommodation in Nos. 22 and 24. Access to all these properties is by way of two sets of steps up from the pavements, one between the retail unit in front of number 20 and that in front of number 22 and again between the retail unit in front of number 24 and the adjoining retail unit in front of 26 Gloucester Road.

20. The inspection began at number 24. Though there is a metal gate at the foot of the access steps, it does not close or lock and so affords no security – indeed, the Tribunal was told (and could see some evidence) that homeless people and other intruders would access the entrance ways from time to time. The side wall of the access needed attention and it was generally very untidy. The steps had been resurfaced, apparently in an attempt (not completely successful it seemed) to stop a leak into the retail shop below (the shop proprietor showed the Tribunal members his electrical cupboard where there was evidence of staining and it was claimed the leaks continued). The porch to the flats at number 24 had a badly damaged door (we were informed it had been so damaged for five years), and was dreadfully untidy with a scruffy communal area and broken glass in the skylight. The electric meter cupboard was unsatisfactory. There was an overgrown access towards a well-kept garden at the back (of which more will be said later). The wooden windows to the residential properties, at the front and the back, were in very poor condition with bare wood and peeling paint. While the stonework and walls of the house were in a fair condition, some of the window sills and balustrades needed attention and there was evidence of overflow and blockage of rainwater downpipes at the back with resultant staining on the walls.

21. The inspection then moved to the entrance to 20 and 22, where again there was no method to close or lock the entrance gate to the steps. The Tribunal was surprised to note beer barrels from the café-bar partially blocking the entrance. Apparently, some are usually there and the Tribunal soon saw why. At the top of the entrance steps, which sported some graffiti and were similarly untidy, the Tribunal found that the roof of the

single storey café-bar was stacked with beer barrels and gas cylinders and a hoist gave the ability to bring the barrels up and down from that roof. Though the Tribunal was surprised, indeed somewhat astonished, that this arrangement should be possible, it was informed that the roof of the shop had been demised by the freeholders to the café bar for that purpose.

22. The visual inspection of the front of the houses revealed that the stonework of 22 Gloucester Road was in fair condition but that of number 20 had cracking and peeling paintwork. Both properties had bare and peeling paint to the windows and the poor state of repair to the windows was pointed out to the Tribunal together with a damaged lintel. The joint entrance way, with the metal protection fence fixed around access to the roof space storage, had little potential to be attractive and it clearly also attracted vagrants and night sleepers. The Tribunal saw the post boxes supplied by the leaseholders to stop post for all being put through the porch door. This first floor porch had an insecure door for the communal electricity meter (for number 20 only). There was a new fire panel but no certificate displayed. Outside steps then led up to second floor entrances. The surface was in poor condition and there were broken tiles on the open landing on the second floor. The Tribunal was told that metallic tiles had been removed from the steps, that the intercom system did not operate; that the first floor landing lights were not working; and that the rainwater pipes on this building were also blocked.

23. The Tribunal could see at the rear of number 22 a rainwater downpipe was blocked with plant growth and evidence of a major leak from that downpipe. Steps down led to the basement flat in number 20, where the painted stonework was in very poor condition. At the first floor level, there was access, with no boundary wall or fence, to a well-kept garden at the rear apparently shared with a row of two storey terraced houses and apartments that backed onto the gardens. It was mentioned at the inspection that the leaseholders had the right to use this garden but had not been asked to pay through the service charge - leading to some disputes about the right of access.

24. It was noted that there was no communal bin area in any part of the three properties. It was also relevant to note that the design of the houses meant that there were no soffits at roof level and the only external timber were the windows and doors.

Limits of the Jurisdiction of the Tribunal

25. In the Application, Mrs McGuiness, on behalf of all Applicants, listed the service charge items in dispute in each year in question and those matters are dealt with later in the Tribunal's determination. However, the Applicant's Position Statement, filed in accordance with the Directions, also includes the following:

(1) A request the Tribunal order a refund of personal expenses;
(2) A request for consideration of financial compensation
(3) A request for a refund of the costs of a failed attempt to obtain management through a Right to Manage Company.

26. At the start of the first hearing day, the Tribunal explained the limits of the jurisdiction under an application under section 27A of the Act, and in particular that there was no power to order such sums to be paid, or compensation, except the limited jurisdiction in

relation to the costs of an application under section 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). The Applicants accepted the position and these claims were not pursued further.

27. The Tribunal also explained to the Applicants that an application under section 27A did not include any power for a Tribunal to require a landlord to take any particular action, even if a failure to act was an alleged or potential breach of a covenant in a lease.

Terms of the Leases

28. The only full copy Lease supplied in the documentation was that relating to Flat 3, 20 Gloucester Road ("the Premises"). Although it is usual for a tribunal to have a copy of just one of the leases in a development, it became clear that there might be some important differences between this Lease and others, especially in relation to the service charge contributions; and the Tribunal sought further information on that point at the end of the first day's hearing.

29. The lease of Flat 3, 20 Gloucester Road ("the Lease") is dated 11 March 2005 and is for a term of 999 years from 1 July 2002. The "Estate" is defined as 18-24 Gloucester Road and the "Premises" as the Top Floor Flat, 20 Gloucester Road. The "Property" means the part of the freehold property owned by the lessor known as 20 Gloucester Road as shown edged red on Plan One and therefore appears to include that part of the café premises immediately in front of the residential old house. The "Building" is defined as that edged blue on Plan 1, namely the residential block or old house, excluding the retail frontage. The significant point to note is that the Premises as defined includes 'the windows of the Premises including the doors and plate glass'.

30. The various rights granted to the Lessee are subject to and conditional upon payment by the Lessee of the Lessee's share of the expenses. The Lessee covenants to pay the relevant share of those expenses as set out in the Fourth Schedule and to further to pay on account in advance the estimated amount of the contribution for the year in question. The share of expenses to be paid by the Lessee is 8.3% of all the various listed items of expenses that the Lessor may incur with three exceptions. However, it should be noted that the insurance contribution is 8.3% of the cost of insuring Estate; the repair contribution is 8.3% of the repair costs to the Building and also 8.3% of the expense of the painting of the exterior of the Building; and the share of any cost of complying with any statute or by-law is 8.3% of the costs relating to the 'Property excluding the ground floor shop'. The three exceptions (to an 8.3% contribution) all provide for a one twenty-ninth contribution (about 3.45%) in respect of maintaining and keeping cultivated the communal gardens, the reasonable cost of employing managing agents for the Estate and the reasonable cost of employing a firm of accountants.

31. The complexity of the definitions and their application was not raised directly or argued before the Tribunal; and despite requesting details at the end of the first day's hearing, the Tribunal did not receive a clear table of the service charge contributions of the eight flats that concern the Tribunal in this case. A barely readable list of the service charge apportionments was given for each of the three blocks, and suitably enlarged copy provided on the second hearing day, but this gives no clarity on how the service charges

for the Estate, Property and Building respectively relate to each other nor do the percentages quoted appear to add up to 100%. Given that the Lessee of the Premises has to pay 8.3% of the costs relating to three different areas (Estate, Property, Building) and 3.45% of the costs of management and accountancy and of maintaining a communal garden no longer vested in the Respondent (and never actually charged), with two retail leases for four retail units involved and a building (Number 18) now managed by a Right to Manage Company as part of the Estate as defined, the complexity of assessing and dividing the costs incurred between the various heads of expense can well be imagined.

32. There was also an oft repeated assertion by the Respondent that the service charge contributions do not add up to 100%. No clear evidence was presented to the Tribunal to justify this assertion. Indeed, the Applicant pointed out an inconsistency in this assertion by reference to the management sales packs recently sent out by the Respondent to conveyancing solicitors. Here, the percentages of insurance and service charges were said to add up to 100%. At lunchtime of the second hearing day, the Respondent's solicitor did send through copies of two commercial leases, one relating to the retail premises at 18/20 Gloucester Road and another to the three premises at 22-24 Gloucester Road. These reveal that the service charge charged on the commercial units is 'a fair and reasonable proportion' with such proportion to be determined by the landlord's surveyor by reference to the proportions of the internal floor area as bears to the aggregate internal floor area of the Building. So those leases did not assist in determining how the service percentages add up and if they add up to 100% – especially as both such retail leases appear at first glance to have a defective definition of 'the Building'.

33. What the Tribunal did see was evidence that on at least one occasion the service charge percentage applied to the Premises was incorrect but had apparently been adjusted later. The service charge accounts for each of the years in question were in the papers before the Tribunal and they are professionally prepared, with income and expenditure properly separated out between the three blocks, 20, 22 and 24. No issue was raised or arguments presented in relation to those accounts. The focus on both hearing days were on the reasonableness of the charges actually made.

The Issue of Repair to the Windows

34. In the original statement of case filed with the Application, the Applicant submitted that a 'major item of claim relates to the disrepair to the timber windows and sashes, the regular redecoration of which is the responsibility of the freeholder, albeit the costs can be recovered through the service charge'. The very poor state of most of the windows to the eight apartments, as seen at the Tribunal's inspection, has been noted above. Moreover, in the original Scott Schedule served, the amount of the financial claim that was put forward in respect of the windows was very significant; and the issue of a failure to redecorate as the Lease required features regularly in the correspondence between the parties.

35. The provisions in the Lease relating to the windows are as follows:

(1) The 'Description of the Premises' specifically includes 'the windows of the Premises including doors and plate glass'.

(2) The ‘Covenants by the Lessee’ include a covenant to ‘keep the Premises (except the parts for which the Lessor is responsible) in repair’; and to ‘clean all windows of the Premises as often as may be necessary’.
(3) The ‘Obligations of the Lessor’, in respect of which the Lessee must make a contribution to expenses through the service charge, include an obligation to keep the structure of the Building in repair including any dormer windows but excluding the frame and the glass.
(4) The same ‘Obligations of the Lessor’, include an obligation to paint the exterior of the Building and to paint ‘the exterior wood and metal parts with two coats of good quality paint . . . at least once every four years’.

36. The combination of these provisions has meant that, over the years, both the Lessor, through its managing agents, and the leaseholders have (correctly) assumed or agreed that the Lease provides for the Lessees to repair the windows of each flat or apartment. This is because the windows are very clearly within the definition of the Premises and therefore the obligation to keep the Premises in repair extends to the windows. But it was also assumed or agreed that the Lessor is responsible, as part of the obligation to paint the exterior, for decorating those windows every four years, with the Lessees then paying for that decorating cost through the service charge. The failure to so decorate, it was claimed, has caused the poor condition and state of disrepair. If this was indeed the proper construction of the lease then the outcome would not only be unusual but also, in the opinion of the Tribunal, difficult to operate in practice.

37. The Tribunal suspects that the interpretation adopted rests on two factors. Firstly, the definition of the ‘Building’ does not specifically exclude the Premises. Since the obligation of the Lessor is to paint the exterior of the Building, it could include the windows, which could be taken to be part of the exterior. That interpretation might be strengthened when one views the three buildings. There is no obvious exterior timber to those Buildings except the windows frames and the entrance doors to the properties.

38. At the commencement of the first day’s hearing, the Tribunal pointed out to the Applicants (as detailed in paragraph 26 above) that the Tribunal had no jurisdiction to order compensation for a failure to fulfil the Lessor’s covenants or obligations in the Lease, even if it was correct that the Lessor had the duty to decorate those windows. However, the Tribunal also indicated that its view was that the proper construction of the Lease was that the windows should be decorated, as well as repaired, by each Lessee. This is because the windows are part of the Premises and the clear obligation to repair those windows must include a responsibility to decorate them when necessary to keep them in repair. The Lessor did not covenant as such to decorate the exterior wood of the Building but rather it was an obligation to decorate the exterior wood. In the context of the Lease as a whole this must be read, in the opinion of the Tribunal, as an obligation to regularly paint the exterior wood of the Building vested in the Lessor but excluding any exterior wood or window frames that are part of the Premises.

39. The Tribunal considers that this interpretation will, in the long run, benefit all Lessees. Each can repair or paint the window frames as and when they see fit provided they fulfil their obligation to keep the Premises in repair. They can, if they wish, agree with other

lessees to share the cost of scaffolding, for example; and the specification, cost and timing of the work is in their control. Overall, this seems to be much better than having to depend on painting by the Lessor, the cost of which would be charged to the Lessees through the service charge in any event. Moreover, if the obligation of the Lessor did include the decoration of the windows, it would be much harder to relate such work to the repair of those windows (such as rot in part of a window frame).

Issues for determination between the parties

40. The attempt at mediation had the beneficial effect of setting out the issues at stake between the parties into a Scott Schedule. The Tribunal had two versions of this schedule – there may have been even earlier ones considered at mediation. The first was updated to 13 September 2019 and was the basis of argument and evidence at the first hearing day. The second is dated 4 November 2019 and was updated with further comments from the Applicants on 21 October 2019, and the comments of the Respondent on 30 October 2019. There was a significant dispute between the parties before the second hearing day about what had been conceded at the first hearing day. The Tribunal determined that most of these matters had not been conceded and evidence on all matters was concluded on the second hearing day.

41. The Tribunal now sets out its determination on all matters at issue within the Scott Schedule, recording those matters which were conceded and the reasons for the Tribunal's determination on the matters remaining in dispute. There were a large number of individual items charged within the service charges for the six years in question where the Applicants contention was that such matters were wrongly charged, or duplicated, or unreasonable. Some are for relatively modest amounts. The more general overall contention of the Applicants, listed in the Schedule, is that the management and accountancy charges were unreasonable given the substantial failure of the Respondent, through the appointed agents, over the six year period, to manage the Properties properly and to fulfil the management obligations to the Lessees.

42. The matters conceded or concluded on the first hearing day will be dealt with first and then the issues more fully aired on the second hearing day are considered. Finally, the Tribunal sets out its determination on the reasonableness of the management and accountancy charges.

Matters conceded or dealt with on the first hearing day

43. The following items were conceded by the Respondent on the first hearing day:

(1) A £40 late payment charge for delay by the utility provider – reference 7.2.10b.
(2) A £180 charge to install a metal plate as no evidence it was done - reference 7.2.4f.
(3) A £180 charge to install a steel plate, a duplicate charge.
(4) A £321.60 charge conceded as a double or unnecessary charge – reference 7.2.4e.
(5) £4,122.75 charge described as fire defences works which was conceded prior to the hearing and a refund confirmed.
(6) Three charges of £55, total £165, which were monthly ground maintenance fees, conceded as double charges – reference 7.2.8b, 8d, and 8f.

44. The Tribunal also informed the parties that its notes from the first hearing day recorded that the following sums had also been conceded by the Respondent after evidence and questions from the Tribunal:

(1) A £187 charge by potential contractors for diagnosis of a problem, the Respondent noting that to charge for this item was most unusual.
(2) A £71 for installation of a key safe claimed to be unnecessary as the work replaced one done only two months previously.

45. The Applicants withdrew their wider financial claim, of £42,000 as the estimated costs of the failure to decorate the windows of the flats and maisonettes. They also conceded that some of their claims in the first Scott Schedule were duplicated.

Matters considered on the second hearing day – original Scott Schedule

46. The Tribunal considers that the following matters raised by the Applicants as unreasonable or incorrect charges within the service charge during the six year period should be deleted or reduced for the reasons specified:

(1) £600 referenced for the retail unit 24A Gloucester Road. The Applicants contend that this was a cost relating to the retail unit only but there was an issue that the resurfacing of the steps to stop the water ingress below could have been seen as repair of the common parts of the Estate. However, when pressed on the payability of this amount under the terms of the Lease the Respondent's counsel conceded that there was insufficient evidence that it was properly charged. The sum should therefore be removed from the service charge.
(2) Out of the sum of £1,203, reference 7.2.9a, £549 of this was shown to be the legal costs incurred by the Respondent in pursuing the cost indemnity from the RTM company. After submissions, the Respondent eventually conceded that that element of £549 should not have been charged.
(3) An invoice charge of £660 (£550 plus VAT) dated 12.12.17 for treating all steps and paths with weed killer. This was part of a wider charge of £1,100 which included regular maintenance invoices of £55 per month. The Applicants asserted (but without clear evidence to that effect) that the work was not carried out. There were however photographs of an inordinate amount of weed growth. The Respondents asserted the work had been done but conceded that the situation was now poor again because maintenance had ceased because of lack of funds and issues regarding the leases. The Tribunal considers the £660 charge is unreasonable because there are monthly invoices in the months both preceding and subsequent to December 2017 and the weeds should have been dealt with during that regular maintenance.
(4) The Applicants challenged the sum of £4,823 for historic charges relating to the Hunters period of management for which there was no evidence. For the second hearing date, the Respondent provided invoice evidence for all this amount except for the sum of £403. That sum of £403 cannot be supported and should be refunded.
(5) The charge of £354, reference 7.2.4j, for an investigative report was not a reasonable charge. The Tribunal is satisfied that a surveyor's report was already in hand but, in any case, this was an investigation into damp into the retail shop at

24A that had reoccurred so the contractor involved could not reasonably charged for reinvestigation as to why the works had not been effective.

47. The Tribunal considers that the following matters raised by the Applicants as unreasonable or incorrect charges within the service charge during the six year period can be justified for the reasons specified:

(1) £1,740 invoice for roof works dated 30.11.14. The Tribunal well understands the grievance of Mrs McGuinness on this issue, when delays by the then agents meant that she undertook repairs at her own expense and was seriously inconvenienced. However, she was refunded the sums she had paid and accepts the price for the work was reasonable. It is true that works costing £1,740 would have required a section 20 notice if the works had been carried out by the Lessor but overall the Tribunal considers it should not disturb the charge made for roofing works; and, if it is technically necessary, grants dispensation to the Respondent for the lack of a section 20 notice.

(2) Out of the sum of £1,203, reference 7.2.9a, £654 of this was accepted by the Applicants as properly charged.

(3) Three invoices for £55 in respect of health and safety assessments which were challenged by the Applicants as unnecessary given that there was also an annual health and safety survey. The Tribunal considers that, notwithstanding rival claims, not substantiated by the Tribunal's notes of the first hearing day, of concessions on the point, the Tribunal finds that there is insufficient evidence to conclude the charges were either unreasonable or duplicated.

(4) A charge of £150 for installation of signage in February 2018 to the electric cupboard did not seem on the evidence presented to be a duplicate charge for work done in November 2017 as contended by the Applicants, and the Tribunal accepts the Respondent's assertion that it was for different work.

(5) The Applicants challenged the sum of £3,757 for historic charges relating to the Haus period of management for which there was no evidence. For the second hearing date, the Respondent provided invoice evidence for the full amount. Consequently, the sum of £3,757 is properly charged.

(6) The Applicants challenged the sum of £4,823 for historic charges relating to the Hunters period of management for which there was no evidence. For the second hearing date, the Respondent provided invoice evidence for all this amount except for the sum of £403. Consequently, the sum of £4,823 less £403, namely £4,420 is properly charged.

(7) A charge for a health and safety and fire risk assessment of £546, reference 7.1.11b, made in March 2017 was challenged as unnecessary by the Applicants since there were annual reports and assessments. The Tribunal accepts the Respondent's evidence as set out in the second witness statement of Mr Davis, who supplied the relevant invoice and noted a partial refund of the amount showing a total charged of £435. Such assessments of health, safety and fire risk are important and the sum is properly charged. Whether the Respondent's agents have properly acted on the recommendations is an issue dealt with in paragraph 56(5) below.

(8) A charge of £174 was made to clear the electrical cupboard and install intumescent strips. While the Tribunal understands why Mrs McGuinness felt that this work was ineffective, since it seems the lock was broken soon after, it is clear to the

Tribunal that this work was recommended and done so is properly charged. But the fact that nothing has since been done to correct the situation is a factor in considering the claim of poor management.

(9) The Applicants challenged the sum of £369 in relation to removal of asbestos from the electrical cupboard. On production of the relevant invoice on the second hearing day, the Applicants conceded that this was correctly charged.

Matters considered on second hearing day – supplementary Scott Schedule

48. A supplementary Scott Schedule was provided at the second hearing day pursuant to the Tribunal Directions of 17 September 2019. These matters were then the subject of evidence and submissions and the Tribunal records its conclusions.

49. The Tribunal considers that the following matters raised by the Applicants in this supplementary schedule as unreasonable or incorrect charges within the service charge during the six year period should be deleted or reduced for the reasons specified:

(1) A total cost of £3,545.56 being 20 invoices by N Power for communal electricity over a considerable period were challenged by the Applicants as excessive and unreasonable as being based on over-estimated meter readings compounded by 'late payment' and 'lack of a direct debit' surcharges. This situation was compounded by the communal supply being placed on a default tariff which, it was claimed, doubled the charge. The Respondent noted that RMG does not set up direct debit payments 'because of funding issues' – which the Tribunal considers to be an unreasonable excuse. The Tribunal could see that the total amount was way in excess of what might have been expected for communal lighting. The Respondent, through Ms Ackerley, conceded the total was obviously incorrect. The Tribunal was assured that 'credits will be made'. The opinion of the Tribunal is that that assurance is not enough. The amounts charged are clearly unreasonable and the total amount obviously wrong. The Tribunal therefore considers the whole sum of £3,545.56 as being unreasonably made and should be refunded. It will then be for the Respondent to obtain from N Power the correct charge on the standard tariffs for power actually used which may then be recharged. The Respondent should bear any costs for late payment or default tariff charges. A competent manager would have acted promptly to sort out what was obviously a problem at an early stage.

(2) An invoice for £300 on 20/09/18 for the fitting of 'keep fire door shut' signs was accepted as a duplicate by the Respondent; and it seems it was accepted that there are in fact no fire doors.

(3) A further charge for electricity to the supply to the common parts in 2017-18 of £1,440 is disallowed for the same reasons as set out in sub-paragraph (1) above and the same comments apply.

(4) The Applicants questioned the cost of handover fees given the issue of seeing four different agents in a period of a little over three years. The Respondents accepted that there were handover fees amounting to £240 and £330 but considered they were properly charged and justified. The Tribunal accepts that in the case of a handover between agents there is extra work involved and that in the normal situation such fees are chargeable under the service charge; but that it is unreasonable in this case for the Lessees to pay all the handover fees when the

changes are made after just a year in two cases. It therefore concludes that one half of the total handover fees of £570, namely £285, should be refunded to the Applicants.

50. The Tribunal considers that the following matters raised by the Applicants in this supplementary schedule as unreasonable or incorrect charges within the service charge during the six year period are justifiable charges for the reasons specified:

(1) The Applicants were unhappy about a fire and security invoice dated 31/01/19 for the creation and fixing of new zone charts, one in each block. They pointed out that there are errors on those charts. The Tribunal recognises that this work is required and the cost of £180 per block, though on the high side, is not obviously unreasonable. But the charts should have been, and need to be, correct and the Respondent should ensure the errors are corrected without a further cost to the Applicants and no further charge to the service charge.
(2) Two invoices for £55 for periodic grounds maintenance were accepted as properly invoiced. But the poor state of the condition of the access ways on the Tribunal inspection is a factor in considering, below, the quality of the management service to the Lessees.
(3) The Osterna Invoice of 30/08/18 amounting to £199.64 for a Health and Safety Fire risk assessment. The Tribunal is satisfied the assessment and fee charged was reasonable and the report was in the papers before the Tribunal. What is concerning is the lack of action on the recommendations.
(4) The £90 invoice for an asbestos re-inspection, at £30 per block, is reasonable. But it was only disputed as the cost was not explained to the Applicants until the hearing. Better information and communication in the future may assist.
(5) The Applicants questioned an invoice dated 16/07/18 for £249.60 which simply stated it was for a visit to the site to investigate a leak at 22 Gloucester Road. The Respondent explained that the fee related to investigation into the works required that were then carried out by the contractor. It also asserted that as a result of using this contractor regularly, more favourable rates are achieved. On balance, the Tribunal accepts this explanation in the absence of further evidence from the Applicants but it does suggest that a single charge by a contractor in such a situation is better than accepting one just for the initial site visit.

51. The Tribunal records that an amount questioned by the Applicants in the sum of £1,041.25 was explained by the Respondent as commercial service charge income, an explanation accepted by the Applicants.

Reasonableness of the management charges

52. The final item in the supplementary Scott Schedule for determination is the Applicants submissions, made at the outset and in the original bundle of documents, that aspects of the management charges made over the six year period are unreasonable in the light of the Applicants' case that there has been no proper or effective management of the Estate, and particularly the three residential blocks, 20, 22 and 24 Gloucester Road. The claim is that the lack of proper management has led to significant dilapidation. The total amount claimed in the Schedule is the sum of £8,323.

53. The Respondent points out that the total of management, account and handover fees in 2015-2018 do not amount to this sum and that the issue of the reasonableness of handover fees was the subject of a separate submission (see paragraph 49 (4) above). The Respondent therefore requested details of how that figure of £8,323 was arrived at. In the opinion of the Tribunal, applying its expertise, the issue is whether the management of the Estate by the various appointed agents, which needs to be in accordance with the terms of the Leases, has been of a standard of a reasonably competent agent in all the circumstances. If the standard of management has fallen short of such competence, then the fees charged, or at least a proportion of them, can be seen, with sufficient evidence, to be unreasonable.

54. It is the opinion of the Tribunal that the standard of management over the years in question has fallen short of the competence required to be shown. Before 2015, it would not be an exaggeration to describe aspects of the management as appalling. The first of the managers in that period were Haus. They were dismissed and a significant portion of their management fees were refunded. The next two managers, BNS and Hunters, were equally inactive and resigned or were dismissed for incompetence by Forte after a year or less.

55. The Tribunal is of the opinion that it would be unreasonable for the Lessees to pay the full amount of management fees charged during the agencies of BNS and Hunters given the fact that the Respondent itself, through Forte, recognised their inability to manage this Estate. The decision of the Tribunal, therefore, is that one half of the management fees charged in the financial year ending 31 December 2015 amounting (rounded down) to £750 (one half of £1,513, the figure in the accounts) should be refunded; one half the management fees charged in the year ending 31 December 2014, namely £1,200, one half of £2,400, should be refunded; and one half or £550 of the £1,100 listed as 'management fees of old agents' in the accounts for the period ending 31 March 2017 should also be refunded – a total of £2,500. A further £1,100 of management fees of the old agents was charged in the accounts for the 15 months to 31 March 2017 and the Tribunal considers those amounts, too, should be reduced by 50%, to £550. This makes a total of £3,050 to be repaid in respect of these management fees. For the record, the Applicants did not dispute or produce evidence of unreasonableness in relation to accountancy fees in any year, except to show that the issue of the accounts were delayed for the 2015 accounting year. In the opinion of the Tribunal, that delay is not significant so all the accountancy fees are properly charged.

56. The current agents, RMG, have been managing the Estate for more than three years. Their representative at the hearing was Mr Davis, who was helpful and candid in his evidence. The Respondent provided, for the second hearing day, a large amount of evidential material including most of the invoices to evidence the spending in the service charge accounts. However, RMG have not, in the opinion of the Tribunal been active enough in dealing with the management of the Estate in a way that a reasonably competent agent should have acted. The following issues have not been adequately addressed:

(1) The Tribunal was told that the badly damaged door to number 24 had been in disrepair for about five years. Replacing or repairing that door should not have been a difficult management responsibility to fulfil.

(2) The general dilapidation of all three blocks was apparent at inspection and the various aspects of the disrepair (broken glass, damaged rainwater goods, damage to stonework and lintels, scruffy communal areas, etc) is more fully set out in paragraphs 20-23 above. It not just that dilapidation that concerns the Tribunal, but also the fact that nowhere in the papers, or orally at the Tribunal, did the Respondent or RMG set out its plans for dealing with these matters. The Tribunal can only conclude that there are no specifications or works which are currently being worked upon, with section 20 notices where necessary, let alone a concerted overall plan of action.

(3) The decoration covenant to paint the exterior parts of the Buildings every four years, unless agreed otherwise, has not been fulfilled. Even when there was apparently a consensus (in the opinion of the Tribunal, an incorrect consensus), that the windows of the flats were included in this obligation, there is no evidence that the Respondent's agents have ever been ready to plan for fulfilling the decoration obligation, whether or not the windows were thought at the time to be included.

(4) The Lessees have the right to use the communal garden and the Lessors a duty to maintain and keep it cultivated, for which the Lessees should contribute a 1/29th share. But that part of the Estate was sold off, the Lessees have never been asked to pay since 2010 and they find that the lack of contribution means that their right to use those gardens is questioned. It is impossible for the Tribunal to comment further save to say that whatever the position, the Lessees have a right to be informed.

(5) The entrance gates at the foot of the two access steps cannot be locked and this allows access by unauthorised persons – which have included access at night by intruders and the consequent problems associated with that. The health and safety report of 24 July 2017 recommended a simplex lock be considered and the Lessees have asked that that work be done, but no action has been taken. It appears to the Tribunal that such action would make a very significant improvement for the residents of the flats yet at no time did the Respondent or its agent indicate that such work was planned, albeit there appears to have been some scoping of the work that might be required allowing the gates to be automatically locked when closed but being able to be opened from the inside without a key to maintain it as a fire exit.

57. The Tribunal would expect a reasonably competent agent to have planned a programme of work over a number of years to fulfil the Lessor's covenants under the Lease, to have communicated that plan to the Lessees, and to seek pre-payment as permitted by the lease of the cost of the works planned to be executed in the current financial year. The Lease also permits the building up of a Reserve Fund for major works.

58. The Respondent and its agent, RMG, referred to a number of problems that hindered the management – though the details of these problems were not disclosed. It was said that the work could not be done without funds from the Lessees, and some lessees (not

identified) were in arrears. However, an agent should be expected to take prompt action to recover sums due in cases of non-payment. It was also said that there were issues with the terms of the leases suggesting that there might not be 100% recovery of the cost of delivering the services – though the disclosure details to new purchasers would seem to contradict that. But even if that is a significant factor, it is not an excuse for failing to deliver what the Leases require. The Lessees cannot be responsible in any way for defects in any of the leases – it would be up to the Lessors to seek to remedy the situation and to do so at their cost.

59. The Tribunal therefore determines that RMG have not acted in a way expected of a reasonably competent agent and that their management fees for the financial years ending 31 March 2017, 31 March 2018 and 31 March 2019 should be reduced by one quarter (25%). The management fees for the fifteen months to 31 March 2017 and for the year to 31 March 2018 total £3,679 and £1,650 respectively. The Tribunal determines that the sum of £1,332 be refunded to the service charge.

60. The management fees charged by RMG for the year ending 31 March 2019 are modest – only £1,513. The Tribunal has decided not to reduce those fees. The Applicants, through Mrs McGuinness are not asking for cheaper management but better management and recognise that this may have to be paid for. The Tribunal hopes that improved management with a clear planned programme to deal with the problems that require attention will be forthcoming.

Application under section 20C of the Act

61. The Application included an application under section 20C of the Landlord and Tenant Act 1985 for an order that the costs incurred by the Respondent landlord in connection with these proceedings are not to be included in the amount of any service charge payable by any of the lessees specified in paragraph 4 above, being the persons on whose behalf the application is made.

62. The Respondent strongly opposed the making of such an order. A decision on this application will be important to both parties, given the two day hearing and the costs that the Respondent is likely to have incurred; and the fact that paragraph 5 of the Fourth Schedule to the Lease permits the expenses, costs and fees reasonably incurred by the Lessor in any proceedings to be charged to the service charge.

63. The Tribunal determines that an order should be made in favour of the Applicant under section 20C in respect of all the costs incurred by the Respondent in connection with these proceedings. Such costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the lessees specified in paragraph 4 above, being the persons on whose behalf this application is made.

64. The reasons for this order are as follows:

(1) The Applicants have succeeded on a substantial number of the grounds set out in their Application.

(2) The Applicants demonstrated that they have sought over a considerable period of time to obtain for themselves better and more responsive management but have been unable to do so and have not had a comprehensive response to many of the issues they raised until this Application was made.
(3) Some matters that required evidence and explanation were slow in being provided by the Respondents and were not available for the first hearing day.

65. The Tribunal has considered whether the order under section 20C should relate to part only of the costs of the Respondent given that the reasonableness of a considerable number of items in question have been upheld and some aspects included in the original Application were outside the jurisdiction of the Tribunal under section 27A of the Act. The Tribunal determines that the order under section 20C should relate to all of the costs incurred in these proceedings as the matters beyond the jurisdiction were not pursued and took up very little time; and even on many of the matters on which the Tribunal upheld the validity in favour of the Respondent it was entirely reasonable to raise those issues and seek invoice or other evidence of the lawfulness or reasonableness of the charges made.

Application under the 2002 Act, Schedule 11, paragraph 5A

66. The Application included an application under paragraph 5A of Schedule 11 to the Commonhold and leasehold Reform Act 2002. This is an application for an order by the Tribunal to reduce or extinguish a tenant's liability to pay an administration charge in respect of litigation costs.

67. The Lease does not appear to contain any right in the Lessor to charge such an administration charge. In any event, no submissions were made to the Tribunal by either party in respect of this application. The Tribunal therefore does not make an order under the 2002 Act.

Closing remarks

68. There is no doubt that the management of these Properties would be a challenge for any managing agent given the mixed retail/residential mix, the fact that number 18 is now run by a Right to Manage company, the complexity of definitions within the Lease and the sale out of the Estate, as defined, of the row of houses and the communal garden at the rear. There may also be issues with the terms of some or all of the leases. In such a situation, good communication to the leaseholders and transparency about the problems will assist, especially as there appears to be a willingness in the Residents Association to co-operate. The Tribunal hopes that the parties can work together to improve management in the future.

69. The Tribunal wishes to express its appreciation for the high quality of the bundles of documents produced by the parties and for the way in which the parties conducted the presentation of their case at the two hearing days.

Right of Appeal

70. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

71. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

72. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

73. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

Judge Professor David Clarke
27 December 2019