11691

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CF/LSC/2015/0121** **MAN/00CF/LAM/2015/0017**
Property	:	**Flats 1 - 6 Grove House, Moorgate Grove, Rotherham, S60 2TT**
Applicants	:	**Ms Jayne Thornes (Flat 1)** **Mrs Jill Hayes (Flat 2)** **Mr Michael Harrison (Flat 3)** **Mrs Tracy Cater (Flat 4)** **Miss Nathalie Wright (Flat 5)** **Mr Dan Brooks (Flat 6)**
Representative	:	**Independent Leasehold Consultants Limited**
Respondents	:	**Paul Rodgers and Zoe Rodgers**
Type of Application	:	**Landlord and Tenant Act 1985 – s 27A** **Landlord and Tenant Act 1985 – s 20C** **Landlord and Tenant Act 1987 – s 24(1)**
Tribunal members	:	**Judge J E Oliver** **Mrs S Kendall MRICS** **Mrs M Oates**
Date of Determination	:	**30 June and 3 August 2016**
Date of Decision	:	**25 August 2016**

DECISION

Decision

1. The Tribunal does not find the Respondents failed to comply with Sections 47 & 48 of the Landlord & Tenant Act 1987 ('the 1987 Act").

2. The Tribunal finds the Respondents have failed to comply with Section 21B of the Landlord & Tenant Act 1985 ("the 1985 Act") and therefore none of the service charges due for the years 2009-2016 are due and payable until the requirements of Section 21B have been complied with.

3. The Tribunal does not find that any of the service charges were incurred more than 18 months before they were demanded, as provided for in Section 20B (1) of the 1985 Act, and therefore the service charges remain payable.

4. The Tribunal finds the service charges for the disputed years are payable in accordance with the Schedule hereto.

5. The amounts charged for major works in 2013 and 2015 are reduced to the statutory limits due to non-compliance with the requirements of Section 20 of the 1985 Act. This is subject to any future application for dispensation pursuant to Section 20ZA of the 1985 Act. Any such application must be filed within 21 days of the receipt of this decision.

6. The Tribunal appoints RDB Estates Ltd to be the manager of Grove House Moorgate Rotherham for a period of three years from 3 August 2016.

7. The Applicants are directed to file with the Tribunal for approval a draft order for the appointment of the manager within 14 days of the receipt of this decision.

8. An order is made pursuant to Section 20C of the 1985 Act.

9. No order is made for costs.

10. The Respondents are to repay the Applicants' fees of the applications in the sum of £630.

Applications

11. There are two applications relating to Grove House, Moorgate Grove Rotherham ("the Property").

12. The First application is by Tracy Cater pursuant to Section 27A of the 1985 Act for the determination of the liability to pay and the reasonableness of the service charges relating to the Property for the years 2009-2016.

13. The Second application is made by all the leaseholders of the Property pursuant to Section 24 of the 1987 Act for the appointment of a manager.

14. The leaseholders are Tracy Cater, Jayne Thornes, Jill Hayes, Spinneyfield Limited (represented by Michael Harrison), Nathalie Wright (represented by Peter Wright) and Dan Brooks (represented by Eileen Brooks). The interests of the parties are common to both applications and are hereafter referred to as the Applicants.

15. Mr Simon McDonald of Independent Leasehold Consultants Limited represents the Applicants.

16. The Respondents to the application are Paul Kirkland Rodgers and Zoe Helen Rodgers ('the Respondents").

17. Mr Stephen Hill of Hills represents the Respondents and is currently appointed as the manager of the Property.

18. A Tribunal Judge issued directions on 23 December 2015 providing for the filing of documents and statements and a hearing to be fixed by the end of February 2016.

19. The Respondents failed to comply with the Tribunal's directions regarding the filing of their statement. The Applicants sought an order that, because of this failure, the Tribunal should appoint a new manager and determine none of the disputed service charges are payable.

20. The Tribunal made a further direction for the Respondents to file their statement by 29 January 2016.

21. The Respondents failed to comply with the Tribunal's further direction and thereafter the Tribunal issued a Summons to Produce Documents requiring the Respondents to attend before the Tribunal on 23 February 2016 and at that hearing produce the service charge accounts, budgets and other documents previously directed to be produced.

22. The Respondents filed some of the required documentation on 22 February 2016.

23. On 23 February 2016 the Tribunal issued further directions advising of an intention to bar the Respondents from taking further part in the proceedings and requiring further written representations from both parties in respect of that matter within 7 days. The Applicants were ordered to file a witness statement from the proposed manager.

24. The Respondents sought an extension of one month to file the required documentation.

25. The Applicants opposed the extension and sought a summary order for the appointment of a new manager.

26. The Tribunal issued a further Summons to Produce Documents and listed the same for hearing on 23 March 2016.

27. The Respondents filed the necessary documentation prior to 23 March 2016 and the Tribunal Judge thereafter reissued the directions dated 23 December 2015 with amended filing dates.

28. The Applicants made further submissions seeking a barring order and for the appointment of a manager both of which were refused by the Tribunal Judge.

29. The Applicants made further submissions the documentation filed by the Respondents as directed was inadequate and because of that they could not file their reply as directed.

30. The applications were listed for a hearing on 30 June 2016. After the conclusion of that hearing it was agreed with the parties there would be a further hearing to determine the issues without their attendance.

31. At the first hearing further directions were issued for the filing of submissions upon the issue of costs, this matter to be considered at the adjourned hearing.

32. Thereafter the adjourned hearing, without the parties, took place on 3 August 2016 for the determination of the applications.

Issues

33. The issues for determination by the Tribunal are, firstly, the reasonableness and payability of the service charges for the Property, secondly, the appointment of a manager, thirdly, whether an order should be made pursuant to section 20C of the 1985 Act and, lastly, whether an order for costs should be made in favour of the Applicants in respect of both applications.

34. The service charges to be determined are for the years 2009 to 2016 inclusive. All the charges within these years are disputed and include Ground Rent, Electricity to Common Parts, Window Cleaning, Insurance, Repairs, Major Works, Bank Charges and Management Fees. In the year 2010 there is also a disputed fee from an enquiry agent.

35. The Respondents did not oppose the application for the appointment of a manager. The Applicants proposed the manager to be appointed by the Tribunal should be RDB Estates Ltd of 2 Fallon Close Laughton Common Sheffield.

36. Within their application for the determination as to the reasonableness and payability of their service charges the Applicants sought an order pursuant to section 20C of the 1985 Act to prevent the Respondents from including the costs of the Tribunal within the service charge.

37. The Applicants further sought an order that the Respondents pay all their costs in respect of both applications. Prior to the hearing the Applicants provided a schedule of costs amounting to £6016.39.

The Property/Inspection

38. The Tribunal inspected the Property in the presence of the Applicants, the representatives of both parties, Mr McDonald and Mr Hill and the proposed manager, represented by Mr Britton.

39. The Property is an Victorian house converted into six flats in 1990/1991. It is situated on a quiet road leading off Moorgate, Rotherham, a residential area approximately a mile from Rotherham town centre.

40. The Property has a stone wall along each of the boundaries that is the responsibility of the Property. At the right hand side of the house is a large garden that does not form part of the Property.

41. The gardens that do belong to the Property contain a number of trees, some of which are subject to tree preservation orders.

42. The Tribunal had the opportunity to see the site of an ash tree that has been removed and which is part of the dispute. It was acknowledged at the inspection that this was in the garden that does not form part of the Property.

43. The Tribunal noted that some of the rendering on the outside of the Property was defective. Mr Hill advised that this had been applied by a previous leaseholder in or around 2005.

44. The Tribunal inspected the only common area being a small vestibule to the entrance of Flats 5 and 6. The charge for electricity made within the service charge is for two outside lights that operate on sensors.

45. The Tribunal also inspected Flat 4 to see the extent of the water ingress as described within the application for the appointment of a manager. Ms Cater confirmed that there had been water ingress into the bedroom caused by leaking gutters that had been repaired. This defect had therefore been remedied. There was also damp in the lounge where water runs down next to the fireplace. The Tribunal was advised that whilst water no longer came into the kitchen there was a damp area that appeared to be deteriorating.

The Law

46. Section 27A(1) of the 1985 Act provides:

An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

47. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

48. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It means:

... an amount payable by a tenant of a dwelling as part of or in addition to the rent–
(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

49. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
> *(a) only to the extent that they are reasonably incurred, and*
> *(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
>
> *and the amount payable shall be limited accordingly.*

50. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable

51. The Tribunal must also have regard to any limitation on the demand of the payment of any service charge as provided for by section 20B of the 1985 Act that provides as follows:

(1) *If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before any demand for payment of the service charge is served on the tenant, then (subject to subsection (2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*

(2) *Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would be subsequently be required under the terms of his lease to contribute to them by payment of a service charge.*

52. When considering the reasonableness and payability of any service charge the Tribunal must also consider whether all statutory requirements have been fulfilled. This is in respect of any "qualifying works".

53. Section 20 of the 1985 Act provides:

(1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7)(or both) unless the consultation requirements have been either-*
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal
(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement
(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount

54. The Service Charges (Consultation Requirements) (England) Regulations 2003 specify the amount applying to Section 20 qualifying works as follows:

> *6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250*

55. In the event the requirements of Section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application can be made to a tribunal pursuant to section 20ZA of the 1985 Act.

56. Section 20ZA of the 1985 Act provides:

> *(1)Where an application is made to a tribunal for a determination to dispense with all or any consultation*

requirements in relation to any qualifying works, or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements

57. Sections 47 and 48 of the 1987 Act make provision for the information to be contained within any notice making a demand for payment. Any written demand for payment must include the Landlord's name and address, the address being one within England and Wales. If any demand does not contain the relevant information, Section 47(2) provides that no monies demanded are payable until such time as that information is provided.

58. Section 24 of the 1987 Act sets out the matters the Tribunal must consider before appointing a manager. Section 22 also sets out upon whom the application must be served.

59. Section 24(1) of the 1987 Act provides:

(1) [A first-tier tribunal] may, on application for an order under this section, by order (whether interlocutory of final) appoint a manager to carry out in relation to any premises to which this Part applies-
(a) such functions in connection with the management of the premises, or
(b) such functions of a receiver,
or both, as [the tribunal] thinks fit

60. Section 24(2) sets out the circumstances under which an order can be made, namely:

(a) where [the tribunal] is satisfied-
(1) that [any relevant person] either is in breach of any obligation owed to him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent upon notice) would be in breach of any obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
(ii).....
(iii) that it is just and convenient to make an order in all the circumstances of the case;
[(ab) where [the tribunal] is satisfied-
(i) that unreasonable service charges have been made, or are proposed or likely to be made, and
(ii) that it is just and convenient to make the order in all the circumstances of the case;
[(aba) where the tribunal is satisfied-
(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;]

[(abb) where the tribunal is satisfied-

(i) there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) that it is just and convenient to make an order in all the circumstances of the case;] or

(b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made.

[(2ZA) In this section "relevant person" means a person-

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.]

[(2A) For the purposes of subsection (2) (ab) a service charge shall be taken as unreasonable-

(a) if the amount is unreasonable having regard to the items for which it is payable;

(b) of the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service chares are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable.)]

61. Any application for an order for costs within any proceedings before the First-tier Tribunal is governed by Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("2013 Rules"). Rule 13(1)-(3) states as follows:

(1) The Tribunal may make an order in respect of costs only-

(a) ....

(b) if a person has acted unreasonably in bringing defending or conducting proceedings in-

(iii) a residential property case

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor

(3) The Tribunal may make an order under this rule on an application or on its own initiative

The Hearing

62. At the outset of the hearing a matter raised by the Applicant was the Respondent's failure to comply with the directions of the Tribunal and, whether, because of that, the Respondents should be barred from

making any oral submissions at the hearing. Mr McDonald confirmed he did not intend to pursue that issue on behalf of the Applicants.

Sections 47 & 48 of the 1987 Act

63. The Applicants submitted that the Respondents, when sending service charge demands, had failed to comply with Sections 47 and 48 of the 1987 Act. The demands state the Landlord to be "the Exor's of R.M. Rodgers deceased". It was asserted the freehold had been transferred to the beneficiaries of the estate and consequently the demands did not comply with the statutory provision and consequently no monies were payable until that was rectified.

64. In support of this the Applicants relied upon correspondence received from the Respondent's solicitors in October 2015 offering each of them the freehold interest. The Section 5A Notice referred to the Landlord as Paul Kirkland Rodgers and Zoe Rodgers. It was submitted that this was evidence that the freehold reversion had been transferred.

65. Mr Hill advised that he was not aware the freehold reversion had been transferred. Paul Kirkland Rodgers and Zoe Rodgers were the executors of the estate as well as the beneficiaries. No notices had been served to confirm the freehold had been transferred as alleged. It was not unusual in this estate for the freehold not to have been transferred. He had acted for the family since the 1950's.

Sections 20B and 21B of the 1985 Act

66. The Applicants submitted that because no accounts had been produced to show costs incurred, the Applicants' liability for the service charge was limited by reason of section 20B of the 1985 Act. The failure to produce accounts as provided for by the Lease meant the service charge charges had not been properly demanded. Section 20B provides that where any service charge was incurred more than 18 months before being demanded, it is not payable.

67. Mr Hill confirmed an estimate for the service charge was sent out each year together with a request for payment of the amount due.

68. Mr McDonald submitted that if proper accounts had been produced any balance could have been carried forward and a Reserve Fund created. Mr Hill advised there had never been a surplus until 2015.

69. Mr Hill confirmed that when sending out the service charge demands he did not send out the Tenant's Rights and Obligations as required by Section 21B of the 1985 Act.

Accounts

70. The Applicants submitted that the Respondents had not complied with the requirements of the Lease in the preparation of the annual accounts and because of that, the service charges are not payable. The Lease

requires two accounting periods, in January and December in each year. Further, the accounts have not been audited as required by the Lease.

71. Mr Hill advised the accounts were not audited. A former leaseholder used to inspect the books for other tenants but that leaseholder had left in 2008/2009. The existing leaseholders had been asked whether they wanted the accounts to be audited and they had said they did not due to the resultant increase to the service charge costs.

72. It was further stated by the Applicants that the service charge demands did not show a breakdown of the charges between the House Charge and Site Charge as defined within the Lease.

73. Mr Hill advised that whilst, in the past, there had been gardening contractors, previous leaseholders had advised they no longer wanted this service to be provided. Consequently there has been no work that would give rise to a Site Charge, other than the disputed costs for the removal of a tree in 2015. All the other charges in the subject years are House Charges.

74. Mr McDonald argued that since there was no gardening service provided, the Applicants had been maintaining the grounds at their own expense. This included the large garden area to the right of the building. It was now established that this area did not form part of the demised premises and the freeholder retained ownership of it. Had the Applicants been aware of this, they would not have undertaken any work within that area. As a result of this, the Applicants were seeking a refund of the costs incurred in maintaining this area. The amount sought was £3000 based upon an estimate of £25 per visit for 20 visits per year over the previous six years. The Applicants employed a gardening contractor but there was no evidence of the cost expended and the claim was therefore estimated.

75. Mr Hill disputed the fact that the Applicants did not know the garden area belonged to the freeholder. He has known this since the property was converted. Any garden maintenance for that area was always charged to the freeholder. The only charge made is the disputed charge for the removal of an ash tree in 2015. This was charged to the Applicants because the tree roots were likely to interfere with the drains. The drains only serve the Property. His understanding was that because of this any costs relating to the drain were the responsibility of the Applicants and not the freeholder whose land the tree was on.

76. Mr Hill confirmed a drain survey had been undertaken in 2008. It had revealed some blockages and those had been cleared. The report did not recommend the tree be removed. However, in 2014, a tree surgeon recommended the tree be removed. This was done in 2015.

77. Mr McDonald submitted that damage by tree roots was an insurable peril and a claim for the removal of the tree should have been made under the freeholder's insurance.

Reserve Fund and Write offs

78. Mr McDonald submitted that the Lease provides for any deficits and credits to be carried forward at the end of each accounting period and for a Reserve Fund to be created.

79. The Respondents advised that previous leaseholders have been in arrears in the payment in their service charges resulting in it being impossible to create a Reserve Fund. There was no surplus until 2015.

80. Mr McDonald advised that amounts have been written off in the service charge accounts and that should be the responsibility of the freeholder's agent and not the leaseholders.

81. Mr Hill advised service charges were written off in 2009 prior to the present leaseholders owning their flats. Flats 2 & 6 were repossessed. The sum of £778.20 was written off in 2006/07, the sum of £1538.90 in 2006 and £2113.24 in December 2007.

82. Mr McDonald did not accept the charges were not recoverable; they could be pursued against a new owner.

Service Charges

83. The Applicants made submissions in respect of all the service charges in each of the years in dispute. Those were as follows:

Management charges

84. Mr McDonald submitted that an average charge is currently £150 per unit for a competent manager. If there was poor management then no fee should be payable. In this case it had been shown that there were deficiencies in the current management of the Property.

85. Mr Hill advised that on a suggested fee of £150 per unit, the management charges for the Property should be £900 per annum. There was no contract with the freeholder; he had worked for the same family since 1957. His charge was a straight management fee. He made no additional charges when having to issue court proceedings for the recovery of any debts.

86. In those years where the management fee was lower, this would reflect that he had done less work in that particular year. It was only with the present leaseholders that he did not have to chase arrears of service charges.

87. Mr Hill advised that in 2012 and subsequent years the management charges increased. He had employed Mr Ridsdale, a retired solicitor to assist him. The management charges reflected the work that had been done.

88. Mr McDonald submitted that the wages for Mr Ridsdale should not be attached to the service charge. Mr Hill denied this was the case.

89. In 2013 the management charges increased to £1200, in 2013 to £1500 and 2014 to £2000.

90. Mr Hill said that in 2013 work was required to the guttering. The contractor recommended replacement and there was additional work in dealing with the specialist contractors. Mr McDonald argued there should be no increase on the previous year because the additional work should have been charged within the section 20 consultation required for the high cost work.

91. Mr McDonald submitted that for 2014 and 2015 the management charges were excessive. In 2014 there was no evidence of any additional work yet the charges were the same as the previous year. Mr Hill advised the charges reflected the work done. In this year the Resident's Association for the Property was formed and all the work done was with their agreement.

Ground Rent

92. In each of the disputed years the service charge demands included a ground rent charge in the sum of £300. Mr McDonald submitted that such a charge should not be included within any service charge demand. This was not disputed by Mr Hill and it was agreed it should be removed.

Electricity to the Common Parts

93. Mr McDonald suggested that the charges for electricity were too high for all the years in dispute. The electricity was for two lights. It was said the Respondents had failed to secure a commercial contract for the supply resulting in higher charges. The charges should be reduced by a half.

94. Mr Hill advised that in 2009 the bill was low. He had tried to go to another supplier but had been told that for the amount involved it was not worth it. In approximately 2014 he had asked the leaseholders whether they wished to move to another supplier and had not received any response.

Window Cleaning

95. Mr McDonald asserted there was insufficient evidence in the documents supplied to show how frequently the windows had been cleaned to support the amount charged.

96. Mr Hill advised the window cleaning company was well established and trustworthy. They used a modern system that did not require the use of ladders. In 2009-2012 their charge for each visit was £26 plus Vat. In 2013 the charge increased to £39.50 plus Vat and in 2014 to £41 plus Vat.

97. Mr McDonald confirmed that from the information provided the charges were reasonable. However, given the increase of the charges in both 2013 and 2014 he would have expected the service to be put out for tender.

Insurance

98. The Applicants submitted that the sum insured for the Property was inadequate. There was no evidence it had been re-valued in the recent past, nor that the insurance had been put to tender. A re-valuation should be undertaken every three years and should be undertaken by a Chartered Surveyor.

99. Mr Hill submitted the insurance valuation was adequate. The Property was originally valued in 1990 and the policy ensures the value is index linked. He discussed the valuation each year on renewal of the policy. He was a member of RICS until 2012. He changed insurance brokers approximately 10 years ago but then noticed the premiums were increasing. He therefore changed brokers in 2010. Mr Hill confirmed his company does not receive any commission from the broker.

100. Mr McDonald stated that using one broker was insufficient and it would be his usual practice to go to 2-3 brokers to obtain competitive quotes.

101. It was noted that the insurance premium for 2011 was charged in the sum of £958.32 whilst the invoice for the same period was £824.26. In 2013 the amount in the service charge account was &986.56 whilst the actual charge was £988.56.

102. Mr McDonald submitted that the continuing use of the same insurance broker was a long-term agreement and consequently there should be a limitation of £100 for this item in all the disputed years.

Repairs

103. The Applicants confirmed that save for the charge for repairs in 2009 and a cost of £160 in 2013, the remaining years were all in dispute.

104. In 2010 the charge for repairs totalled £575.79 comprising a charge for the repair to the entrance doorframe leading to Flats 5 and 6 in the sum of £407.79, the repair to four slates at a cost of £68 and a charge for two visits to inspect the roof at a cost of £60.

105. The Applicants argued the charges for the repairs to the doorframe should not be paid because the door should be a fire door, fitted with self-closers and was not. Mr Hill stated that whilst an internal door needs to be a fire door, an external door does not. Mr McDonald disputed this quoting the Fire Regulatory Order 2005.

106. In 2011 the charges for repairs totalled £480 to replace broken slates and re-bed hip tiles. Mr Hill advised the roof at the Property had always been troublesome, especially the western elevation.

107. Mr McDonald submitted the roof should have been replaced. If it had always been a problem then when the conversion was carried out in 1992 there should have been an architect's certificate to enable any problems to be rectified. Mr Hill advised that there were no warranties on the roof. The freeholder undertook the conversion and it had ended in a dispute with the builder.

108. In 2012 there was a charge of £195 for excavating a manhole and freeing the drains, a charge of £365 for refurbishing the vestibule outside Flats 5 and 6, a charge for a wall repair of £584 and a charge for roof repairs in the sum of £1541.

109. Mr McDonald submitted the charge for the blockage to the drains was an insurable event. Further, the blockage was on the garden area belonging to the freeholder and therefore was his responsibility. Mr Hill argued that the drain only served the Property and consequently any repairs were the responsibility of the leaseholders, irrespective of whether the drains were on the demised premises or not.

110. Mr Hill advised the refurbishment works costing £365 was necessary work following the repairs to the doorframe in 2010.

111. The cost of the wall repair was disputed upon the basis it should have been an insurable event. Mr Hill advised the repair referred to the wall abutting Moorgate Close. It had collapsed and this appeared to be caused by tree damage. He consulted the local authority's arborist who recommended a root trim. It was disputed between the parties whether this was an insurable event that should have been claimed under the insurance policy. Mr Hill submitted that had an insurance claim been made an assessor would have inspected the wall and there was a possibility that the collapse was a maintenance issue rather than an insurable event. It was unclear between the parties whether any claim would have been a subsidence claim or other. The excess under the insurance policy for subsidence was £1000 and for other contingencies, £150.

112. Mr McDonald confirmed the Applicants' initial objection to the charge of £1541 for roof repairs was upon the basis that this appeared to require consultation pursuant to Section 20 of the 1985 Act. However, having seen the invoice it could be seen this was the total of three separate jobs and therefore this argument was withdrawn. Nevertheless

there was still an objection to the cost given that this was still a repair to a roof that should have been replaced.

113. Mr Hill advised the repairs were to the roof above Flat 4 and the vestibule to Flats 5 and 6 and had been done with the agreement of the leaseholders.

114. In 2013 the repair charges were £20 being a charge for providing an estimate, £47 for the repair to a light fitting and a charge of £3576 by Rotherham Seamless Gutters for replacement guttering at the Property.

115. Mr McDonald objected to the charge of £20 whilst Mr Hill advised this was not unusual and was reasonable. There was also an objection to the charge for the repair to a light fitting, it being argued this repair required a Part P certificate. Since one had not been provided no charge should be made. Mr Hill submitted such a certificate was not required for minor works. In respect of the invoice for £3576 Mr McDonald advised this should be limited to £250 per leaseholder since the requirements of Section 20 of the 1985 Act had not been complied with. Mr Hill confirmed there had been no Section 20.

116. There were no repair charges in 2014. In 2015 they totalled £515. Mr Hill was unable to provide any invoices to support those costs and was unable to say to what they related.

117. Whilst not shown on the service charge demand for 2015, an invoice for £11,271.92, dated 26 May 2015, was disclosed being further costs from Rotherham Seamless Gutters for replacement guttering at the Property. It was again argued that this cost was limited because the requirements of Section 20 of the 1985 Act had not been complied with. Mr Hill advised the work had been done with the approval of the Residents Association and several estimates had been obtained. Nevertheless, it was confirmed no formal consultation had been undertaken.

118. In 2015 there was a further charge of £850 being the cost of removing an ash tree standing on the garden owned by the freeholder. Mr Hill advised this was done because he had gone to inspect the drains and could not get into the manhole because of tree roots. He confirmed the original report did not recommend the tree removal. However, he had consulted a tree surgeon who recommended it was removed. Mr McDonald stated the damage was an insurable peril and a claim for this should have been made under the freeholder's insurance policy. Mr Hill confirmed the charge had been made because the issue related to the drains serving the Property.

Bank Charges

119. From 2012 to 2015 there were bank charges within the accounts in the sums of £72.21, £84.12, £48.96 and£120.22 respectively. Mr McDonald submitted there should be no charges on a client account. Mr Hill accepted that for each of the years the charges should be removed.

Enquiry Agent Fee

120. In 2010 there was a charge for an enquiry agent in the sum of £82.25. Mr Hill confirmed this was a charge for chasing a debtor for unpaid service charges. Mr McDonald argued this was a cost that should have been included within the claim against the leaseholder and should not form part of the service charge.

2016

121. Mr Hill confirmed no service charge accounts were yet available for this year. He had paid the insurance premium, electricity, repairs and window cleaning, although the latter had now been put on hold.

Appointment of a Manager

122. Mr Hill advised that he had no objection to the appointment of a manager to replace his company, Hills as the managing agents for the Property.

123. Mr McDonald submitted that there was sufficient evidence from the issues raised on behalf of the Applicants to show that Hills had not carried out their managerial responsibilities properly leading to the deterioration of the Property. The fact they had not complied with the requirements of Section 20 of the 1985 Act showed their lack of expertise.

124. Mr McDonald advised he had approached three other managing agents to replace Hills and none had been willing to do so. He therefore proposed that RDB Estates Ltd be appointed. In the event Mr Hill wanted to relinquish his appointment there was some urgency in securing a replacement. He proposed RDB Estates Ltd be appointed for a period of three years; it would take this time to resolve all the issues at the Property.

125. Mr Britton attended the hearing on behalf of RDB Estates Ltd and gave details of his experience. He currently manages 274 units. He previously worked for other managing companies before establishing his own company.

Section 20C

126. The Applicants sought an order pursuant to Section 20C of the 1985 Act. Mr Hill confirmed that he would not seek to recover any of his costs from the Applicants.

Costs

127. Mr Hill advised that he had been served with a schedule of costs on the morning of the hearing. A direction was therefore made for the

Respondents to have an opportunity to submit written comments upon the application and the schedule before a final determination was made.

128. In his subsequent written representations Mr Hill confirmed his objection to such an order, arguing that had the Applicants or their representative contacted them, much of the issues could have been resolved without the need for an application to the Tribunal. It was said the Applicants had been invited to inspect receipted accounts and had not done so and some items in dispute amounted to less than £10. Further, the Applicants' representative continued to argue points that had been dealt with by the Tribunal at an interim stage.

129. Mr McDonald wrote to the Tribunal advising that he had not received a copy of any correspondence upon the issue of costs from the Respondents and had therefore not made any response.

Determination

Sections 47 & 48 of the 1987 Act

130. The Tribunal considered the issue of whether the Respondents had complied with sections 47 and 48 of the 1987 Act. It concluded there was no evidence to support the Applicants' assertion that the freehold reversion had been transferred from the executors of the estate to the beneficiaries, although they are the same people. The Section 5A notice that had been served referred to "the Landlord" and named Paul Kirkland Rodgers and Zoe Rodgers. It was not certain their capacity when described as "the Landlord". This description could be either as the freeholder or as the executors to the freeholder. There was nothing to confirm any transfer had taken place. No notices had been served to say such a transfer been completed. The Applicants did not produce any copy of the title to support their claim.

131. The demands for payment made by the Respondent all contained within them the name and address of the Landlord described as in paragraph 125 above. Accordingly the Tribunal does not find that the Respondents have failed to comply with Sections 47 and 48 of the 1987 Act.

Sections 20B and 21B of the 1985 Act

132. The Tribunal does, however, find that the Respondents have failed to comply with Section 21B of the 1985 Act in that when making demands for payment, the Respondents have not served the necessary Tenant's Rights and Obligations. Mr Hill had confirmed no such information had been served. Consequently the Applicants are not obliged to make payments for the years in issue until such time as the requirements of Section 21B have been complied as provided for by Section 21B(3).

133. The Tribunal considered the issue of non-compliance with the terms of the Lease and, in particular, the Tribunal noted the arguments put forward that the service charges were not payable because accounts had not been prepared as required by the Lease. This was necessary before any payment could be demanded. Consequently reliance was placed upon Section 20B, namely that because this had not been done, more than 18 months had expired and the service charges were not payable.

134. The Tribunal noted the decision made in Elysian Fields v Nixon [2015] UKUT 0427 (LC) where it had been argued that because accounts had not been prepared as required by the Lease, no service charges were payable. The Upper Tribunal determined that compliance with the Lease was not a condition precedent to the payment of the service charge. The Tribunal therefore does not accept the argument made by the Applicants that failure to prepare accounts exempts them from the payment of their service charges.

135. Due to the demands for payment not being accompanied by the Tenant's Rights and Obligations, there was an argument those demands were defective and again the Section 20B applies.

136. The Tribunal is not persuaded by this argument. Although the service charge demands are defective, they had been made. The fact they were not payable because of the defect did not mean no demand had been made. Consequently the Tribunal does not find that Section 20B(1) of the 1985 Act has been satisfied.

Accounts

137. The Tribunal considered the fact that the Respondents had not prepared accounts in the" Accounting Period" as defined within the Lease. The definition of "the Accounting Period" within the Fifth Schedule of the Lease is as follows:

> a. *"the Accounting Period" shall mean a period commencing on the First day of January and ending on the Thirty first day of December in any year of the said term or such other period as shall be substituted therefore by the landlord in his absolute discretion"*

138. The Respondents issued the Service Charge accounts annually. The terms of the Lease provided for this in allowing the Landlord to substitute a different accounting period as referred to as above. Therefore the Tribunal did not find that the failure to provide half yearly accounts was a reason for the service charge not to be paid. The Applicants had not suffered any detriment by reason of the Respondents' actions.

139. The Tribunal further considered the fact the accounts were not audited. It took note of the fact that the Respondents had asked the Applicants whether they wanted the accounts to be audited and they had said not.

The Tribunal did not consider it reasonable for the Respondents to be criticised for failing to do something that had been agreed upon by the Applicants.

140. The Tribunal considered the application made by the Applicants to be reimbursed their costs for maintaining a garden area that belonged to the freeholder. Whilst the Tribunal accepted the Applicants had clearly misunderstood the extent of the demised premises, nevertheless it was clear from the plan attached to a copy lease that the disputed area was outside the demised premises. There was no evidence the Respondents had made any representations to say the garden was the responsibility of the Applicants.

141. The Tribunal did not accept it had any power to award any sums to the Applicants as requested and consequently the application for reimbursement fails.

Service charges

142. The Tribunal considered the reasonableness of the service charges and determined as follows:

Write offs

143. The Tribunal noted the arguments made regarding those service charges written off but further noted this occurred in the years prior to this application. The Tribunal had no further information to determine to what the debit balance of £1766.23 related that had been carried forward from 2008 and consequently had no information to deem it unreasonable.

Management Charges.

144. The Tribunal considered the arguments made by the Applicants in respect of the management fees. Whilst there was significant criticism of how the Property had been managed the Tribunal did not consider the charges made to be unreasonable, save for those in 2013 and 2014. In both those years additional management charges had been made for the work involved in dealing with the major works to the guttering and roofing by Rotherham Seamless Gutters. The Tribunal does not consider it appropriate for there to be any additional charges given that any extra work should have formed part of the costs of the consultation required by section 20 of the 1985 Act. The fact the consultation was not carried out as referred to in paragraphs 111 and 113 does not alter this. Consequently the additional charges made in those two years are disallowed and the amount payable in each year is £950.

Ground Rent

145. It was accepted by all parties that this liability is not one to be charged within the service charge demand. It is disallowed for each of the disputed years.

Electricity to the Common Parts

146. The Tribunal considered the argument electricity should have been on a commercial tariff.

147. The Tribunal noted there was no evidence put forward as to what a commercial tariff could have achieved, other than the Applicants stating the charges should be halved. Mr Hill had given evidence to advise he had attempted to change supplier but had been told it would not make a significant difference.

148. The Tribunal noted that whilst the charges had increased in 2013-2015, it further noted that the cost of the electricity rose within the same period. It did not consider any of the charges, ranging from £50.30 to £153.36 to be unreasonable. This was a charge of between £8.38 and £25.56 per Applicant per annum. Any change would be de minimis.

Window Cleaning

149. The Tribunal noted whilst this was originally disputed, this was withdrawn at the hearing. The Tribunal did not find any of the charges to be unreasonable. Consequently, there is no reduction to any of the charges.

Insurance

150. The Tribunal considered the argument put forward by the Applicants whether the insurance was a long term qualifying agreement requiring consultation pursuant to Section 20C of the 1985 Act. If it was, then, for each year, the Applicants' liability for the premium was limited to £100 each.

151. The Tribunal did not accept this argument upon the basis the contract for insurance was for a period of 12 months. It was renewable in each year. During the disputed years the Respondents had changed the insurance broker to obtain a more advantageous quote. Whilst this broker had remained competitive, there was nothing to prevent the Respondents from changing to another broker. Therefore, because the contract did not exceed 12 months it was not a long-term agreement as required by Section 20C.

152. The Tribunal thereafter considered whether the charges in each year were unreasonable and determined they were not. Although the Respondents changed the broker to try and reduce the premiums, there was no evidence before the Tribunal to suggest either of them were not

reputable within their field. No evidence was brought to suggest what the premiums should otherwise have been.

153. The Tribunal noted that in 2011 the charge was £958.32. However, the invoice for that year was £824.26. The charge is therefore reduced to £824.26. In 2015 the amount charged was£986.56 whilst the amount invoiced was £988.56. The correct amount of £988.56 is allowed.

154. In the remaining years the amounts charged for insurance are all considered to be reasonable and are therefore allowed.

Repairs

155. The Tribunal was asked to determine upon all the charges for repairs for the disputed years, save for those in 2009 and the sum of £160 in 2013.

156. In 2010 there was a charge of £407.49 for repairs to the door leading to the vestibule to Flats 5 and 6. The Tribunal did not accept the submissions made by the Applicant that the entrance door to the vestibule should have been a fire door and that because it was not, none of the charges were payable. It is noted the terms of the Regulatory Reform (Fire Safety) Order 2005, as referred to the Tribunal, does not extend to private homes, including flats within a block as is the Property. It further noted from the Advice Note from the Association of Residential Managing Agents Ltd, again included within the papers supplied by the Applicants, that their recommendations for the front door to flats refers to the front door of individual flats and seemingly not to one leading to a vestibule. In this case the entrance door serves two flats. It was not unreasonable for the Respondents to carry out necessary repairs. The amount charged is reasonable.

157. The two further charges for 2010 relate to roof repairs. It was noted the Applicants submitted that there should be no charge for repairs because a new roof was required. It was further noted that there is no warranty for the roof that, in any event, would have expired at the time of the disputed years. No evidence was brought to the Tribunal to show a new roof was necessary. Mr Hill had explained that the westerly elevation was troublesome but there was no reason to say the repairs carried out were not necessary. The amounts charged for the year totalled £128.00 and are deemed to be reasonable.

158. In 2011 the charges for repairs were £480 again for roof repairs. For the same reasons as stated at paragraph 156, the Tribunal does not consider the work or cost to be unreasonable and is therefore payable.

159. In 2012 there are four disputed charges, the first being a charge of £195 for clearing the drain serving the Property but on land not forming part of the demised premises. The Tribunal accepted the submissions made by Mr Hill that this was a charge payable by the Applicants. Whilst not on their land there was nothing to dispute the evidence that the drain

only serves the Property. The Tribunal therefore accepts the argument that its maintenance is the responsibility of the Applicants. The Tribunal notes it is said the repair was an insurable event. Had it been so, the excess would have been at least £150. The cost to the individual Applicant is therefore minimal. No evidence was produced to show the charge was unreasonable and is therefore allowed.

160. The second disputed charge of £365 was for the redecoration of the vestibule area. In evidence Mr Hill confirmed the damage was caused by water ingress. In those circumstances the Tribunal considers a claim should have been made for determination under the insurance policy. An excess of £150 would have been payable had the claim succeeded. In the event no such claim was made, to enable a determination by the insurance company, the Tribunal reduces the amount payable to the level of the excess. Therefore the charge of £365 is reduced to £150.

161. The charge made for the repair of the wall is allowed in the sum of £584. The Tribunal noted Mr Hill's arguments that the matter was not referred to the insurance company, but considered had it been, the claim is likely to have been one for subsidence. The excess for such a claim was £1000 and would have exceeded the amount paid.

162. The Tribunal noted that the final charge of £1541 for roof repairs was conceded by the Applicants and is therefore payable.

163. The Tribunal determined that the disputed charges, in the sums of £20 and £47 in 2013 were reasonable and payable. It did not consider it unreasonable for a tradesman to charge a fee for producing a quote. Similarly the charge for the replacement of a light bulb is reasonable. The Tribunal noted the regulations referred to by Mr McDonald but did not consider them to apply to the minor work that was carried out by a certified electrician.

164. The Tribunal noted that a charge in this year by Rotherham Seamless Gutters for £3576 and in 2015 for £11271.92 were said to be limited upon the basis the consultation requirements of Section 20 had not been complied with. The works were major works and Mr Hill stated that whilst he had obtained quotes and the agreement of the Applicants to the works, the formal consultation process had not been carried out. The Tribunal noted it is open to the Respondents to make an application to the First-tier Tribunal for dispensation to the requirements of Section 20 pursuant to Section 20ZA of the 1985 Act. Any such application must be made within 21 days of the receipt of this decision. However, until such time as an application is made and determined, the costs attributable to the works are limited to £250 per item of work per Applicant. Consequently the charges in 2013 are limited to £1500 as are those in 2015.

165. In 2015 a charge of £515 was made but the Respondents were unable to produce any invoices to say what those charges were. In the absence of

any evidence to support those costs, the Tribunal determined they were not payable.

166. The Tribunal determined the charge for the removal of the ash tree, in the sum of £850 in 2015, would be disallowed. There was no evidence brought before the Tribunal to confirm there was any damage to the drains that justified the tree removal; only that its removal was recommended. In those circumstances the charge to the leaseholders was unreasonable.

Bank Charges

167. The Tribunal determined all charges made in the disputed years for this item should be disallowed. No bank interest should be charged on a client account.

Enquiry Agent's Charges

168. The Tribunal determined the sum of £82.25 charged in 2010 was not payable. It agreed that such costs should have formed part of the costs charged to the individual leaseholder that was the subject of proceedings.

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169. The Tribunal makes no determination for this year; no accounts or invoices having been produced to the Tribunal. It was therefore not possible to determine whether the charges were reasonable or otherwise. It was for the parties to take note of the Tribunal's determinations for some of the charges in earlier years.

Appointment of a Manager

170. The Tribunal noted the wish of Hills to relinquish their appointment as the manager of the Property and the willingness of RDB Estates Ltd to assume that responsibility.

171. The Tribunal considered the requirements of Section 24(2) of the 1987 Act and determined that Section 24(2)(a)(iii) had been satisfied. Given the findings of the Tribunal in relation to the service charges, the Tribunal found that unreasonable service charges have been made. In addition Mr Hill's desire to surrender his duties, it is also just and convenient for an order appointing RDB Estates Ltd to be made.

172. The Tribunal noted the Applicants agreed to the appointment of RDB Estates Ltd. They had had the opportunity to consider the contract appointing RDB Estates Ltd and had no objection to it.

173. The Tribunal determined that RDB Estates Ltd would be appointed the manager for the Property for a period of three years commencing from 3 August 2016.

174. The Applicants had previously submitted a draft order. The Tribunal noted that within that order reference was made to the Head Lesssor and underleases. In this case there is no head lessor, nor any underlesees. The Applicants are leaseholders. The Applicants are therefore directed to resubmit a draft order for approval within 14 days of the receipt of this decision.

Section 20C

175. The Tribunal determined an order would be made pursuant to section 20C of the 1985 Act. At the hearing, Mr Hill had confirmed he did not seek to recover any of his costs from the Applicants.

Costs

176. The Tribunal considered the application for costs made by the Applicants. The schedule of costs prepared for the hearing amounted to £6016.39.

177. The Tribunal noted its powers to make any award for costs as provided for in the 2013 Rules. These provide that such an order can only be made where a party has acted unreasonably. In *Willow Court Management Company (1985) Ld v Mrs Ratna Alexander, Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Ltd and Mr Rymnod Henry Stone v 54 Hogarth Rod, London SW5 Management Ltd [2016] UKUT 290 ((LC), LRX/90/2015, LRX/99/2015 and LRX/88/2015,* the Upper Tribunal outlined the standards required for a party to be judged as unreasonable. It was said:

> *"An assessment of whether behaviour was unreasonable requires a value judgment on which views might differ, but the standard of behaviour expected of the parties in tribunal proceedings ought not to be set at an unrealistic level. There was no reason to depart from the guidance on the meaning of "unreasonable" in Ridehalgh v Horsefeild [1994] Ch.205. Unreasonable conduct included conduct that was vexatious and designed to harass the other side rather than advance the resolution of the case. It was not enough that the conduct led to an unsuccessful outcome. The test could be expressed in different ways by asking whether a reasonable person would have conducted themselves in the manner complained of, or whether there was a reasonable explanation for the conduct complained of. Tribunals ought not to be over zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities to manage cases before they got to a full hearing."*

178. In considering the actions of the Respondents in the proceedings the Tribunal does not find they amounted to unreasonable conduct such as to justify an order for costs. It is evident from the correspondence passing between the Tribunal and the parties that whilst there was a failure by the Respondents to file documents as directed, this appears to have been as a result of a lack of knowledge by the Respondents

representative, rather than a wish to harass the Applicants. It was evident at the hearing that Mr Hill endeavoured to assist the Tribunal wherever he was able to do so and admitted fault where appropriate.

179. The Tribunal therefore makes no order for costs. The Applicants have, however, succeeded in their application for the appointment of a manager and, to a limited extent, in their application in respect of the reasonableness and payability of the service charges. Accordingly the Tribunal orders the Respondents to repay the application fees in the total sum of £630.

SCHEDULE

Unless referred to within the Schedule the service charges for each of the disputed years are reasonable and payable.
* These amounts are subject to any subsequent application for dispensation pursuant to Section 20ZA of the 1985 Act.

Service Charge	**Year**	**Amount charged**	**Amount Allowed**
Management Charges	2013	£1200	£950
Management Charges	2014	£1200	£950
Ground Rent	2009-2015	£300	Nil
Insurance	2011	£958.32	£824.26
Insurance	2015	£986.56	£988.56
Repair	2012	£365	£150
Repair	2013	£3576	£1500 *
Repair	2015	£11271.92	£1500 *
Repair	2015	£515 and £850	Nil
Bank charges	2012-2015	£325.40	Nil
Enquiry Agents fee	2010	£82.25	Nil