FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HB/LIS/2015/0008
Property	:	303 Airpoint, Skypark Road, Bristol BS3 3NG ("the premises")
Applicant	:	Mr Daniel Collins
Representative	:	None
Respondent	:	Airpoint RTM Co Limited
Representative	:	Simon Allison Counsel instructed by Clarke Willmott LLP Solicitors
Type of Application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge HD Lederman Mr R A Wilkey FRICS
Date and Venue of Hearing	:	Paper Determination; no hearing
Date of Decision	:	10 September 2015

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the sum of £1,451.84 is payable by the Applicant in respect of the service charges demanded pursuant to an application for payment dated 23 June 2014 in the service charge year ending 31 December 2014 which include sums charged on account for proposed works to the roof and elevation of the Building containing the premises. That sum was payable on 1st July 2014.

2. The Tribunal determines that the sum of £1,451.84 is payable by the Applicant in respect of the service charges demanded pursuant to an application for payment dated 18 December 2014 in the service charge year ending 31 December 2015 which include sums charged on account for proposed works to the roof and elevation of the Building containing the premises. That sum was payable on 1st January 2015.

3. The Tribunal makes no order for reimbursement of the Applicant's fees paid by him to secure this determination.

4. Insofar as may be necessary the name of the Respondent to this application is amended to Airpoint RTM Company Limited, in substitution for "TMS and Blenheims" (the managing agents named as the Respondent in the application form).

The application

5. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") of amounts payable by the Applicant in respect of the service charge years ending 31st December 2014 and 31st December 2015 relating to proposed works to the roof and associated works at the premises.

6. The application form completed by the Applicant gave no indication whether he wished to apply for an order under section 20C of the Act that none of the costs of these proceedings are to be treated as relevant costs for the purpose of service charge. The Tribunal makes no decision on that issue which may be dealt with separately if the Applicant makes an application.

7. Most of the relevant legal provisions are set out in the Appendix to this decision.

The determination without a hearing

8. The Applicant is not represented. He did however participate in a mediation with the Respondent under the auspices of the First tier Tribunal (Property Chamber) earlier in 2015. Following that mediation (which did not successfully compromise the issues between the parties), in the Tribunal's Order dated 01 May 2015 it was directed that this application was to be determined without a hearing under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

unless any party objected in writing to the Tribunal within 28 days. No objection was made. On 11 May 2015 the Applicant is recorded as having requested a 3 week extension of time for compliance with paragraph 5 of the directions of 01 May 2015 which required him to send to the Respondent various items including a statement detailing his grounds for dispute and the amounts in dispute.

9. The Applicant responded by a letter received on 15 June 2015 which is part of the bundle at [48] indicating that the amount he disputed came to £2903.68. This is equivalent to the two demands of £1,451.84.

The Bundle of documents used for the determination

10. The Bundle of documents (and other materials) used for this determination have been prepared by the Respondent's solicitors Clarke Wilmott. The Bundle consists of 262 numbered pages (excluding the additional page referred to below). It was delivered under cover of a letter dated 14 August 2015. In these reasons references to page numbers in that Bundle are in [ ].

11. Upon initial consideration of the Bundle it became clear that the second page of the first (and only) witness statement of Sally Robinson dated 2nd July 2015 at pages [241-242] of the Bundle was missing and had been omitted. A copy of the missing page containing paragraphs 5 to 15 inclusive of the second page of the statement. A copy of that page was obtained by the Case Officer and the Applicant was sent a copy and asked for any additional comments. He responded by e-mail on 7th September 2015 a copy of which was forwarded to the Respondent's solicitors. A copy of the missing page containing paragraphs 5 to 15 inclusive of the second page of Sally Robinson's statement contained some obvious errors where 2015 had been written for 2014 and the Tribunal has read that statement accordingly. The Respondent has contended the entire statement was served upon Mr Collin in July 2015.

The copy of the Lease

12. The copy of the Lease provide by the Applicant with his application at pages [12-31] was a copy of a draft unexecuted copy which did not specifically relate to the premises 303 Airpoint. The Tribunal has referred to the copy of the Lease produced by the Respondent as that is a copy of the Lease relating to the premises 303 Airpoint. There are some differences in clause numbering between the two Leases.

Inspection

13. Neither party requested an inspection of the premises. In the Tribunal's view no inspection of the premises is required or would be proportionate to the sums in issue, particularly since much of the work has not been carried out and can be reviewed when the final costs are known. There are photographs, sketches and detailed descriptions of the premises and in particular the roof areas: see for example the report of RSW Roofing

dated 23 September 2013 at [132-136] and a variety of reports from AJ Hodges, Associates Chartered Building Surveyors including that dated 08 November 2013 at [140-148].

The background

14. The premises which are the subject of this application are part of a development including a block of flats and estate containing 255 flats in Bedminster, south Bristol with eight floors: see the description in surveyor's report of 19 December 2013 at [150]. The premises appear to have undergone extensive refurbishment (and extension) for residential use in about 2007. An unusual feature is that the premises house a running track and a glazed function area on the roof. The main building was previously in non-residential use said by the Respondent to have been used as a factory. There appears to be a large glazed atrium: see for example the tender comparison report at [187] and tender return at [199] and [206]. There are 3 blocks of flats: see the tender return at [193]. There is also extensive balustrading and handrails which require work: see the tender return at [204].

15. Water penetration from the roof and adjoining areas occurred. This prompted investigations by AJ Hodges Associates Chartered Building Surveyors, contractors and others acting on behalf of the Respondent which appears to have taken over management in about 2012. The day to day management appears to have been carried out by Blenheims during the relevant period. The water penetration may also require work to the elevation as well as the roof area.

16. The Applicant holds a 999 year lease of a first floor flat known as 303 Airpoint dated 18 April 2008 (a copy of which is at [108-129]) ("the Lease") which requires the Landlord to provide services and the Tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. The Applicant is one of two joint lessees, the other is Claire Jones the other registered proprietor. She is not a party to this application. Service Charge demands have been addressed to "Mrs and Mrs D Collin".

17. It is not disputed that the Respondent acquired the right to manage the Building and Estate which includes the premises on 19 October 2011. The effect of the Respondent becoming entitled to the right to manage is that the Respondent is entitled to demand collect and expend service charges under the Lease and the Respondent has become liable to undertake management functions of "the Manager" under the Lease. None of this was in issue. Where, as here, the Respondent is a Right to Manage Company, sections 18-30 of the Act set out in the appendix to this decision have effect as if references to the Landlord in the Act are to the Respondent: see paragraph 4 of Schedule 7 to the Commonhold and Leasehold Reform Act 2002.

The issues

18. The Applicant's letter received on 15 06 2015 at [48-49] setting out his understanding of the issues and the application form, give rise to potentially relevant issues in respect of the cost of roof and elevation works as follows:

- Whether interim (on account) demands for roof repair works at the premises dated 23 06 2014 and 18 12 2014 are authorised by the Lease.

- To the extent that the sums claimed for roof works may be in advance of costs being incurred whether the sums claimed are reasonable in amount (section 19(2)(a) of the Act);

- To the extent that the sums claimed are in respect of works carried out to date whether those sums have been reasonably incurred;

- Whether there has been compliance with section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 (as amended) ("the Consultation Regulations")

- Whether the Applicant should be given time to pay and the date when the sums claimed are payable.

19. The second and third issues arise from the Applicant's complaint that payment is being requested in advance of an insurance claim to meet the costs being resolved, made in the application form at [10].

20. Having considered the evidence and written submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Issue number 1: authority for charges under the Lease

21. There is abundant evidence in the Bundle that there has been water penetration to the premises and that works of repair to the roof elevations and associated structures are required.

22. The service charges demanded for roof and elevation works have been said to be for works of repair to those areas; for the main repair works which have yet to be carried out. The service charge payable by the Applicant as lessee by the covenant in clause 6.3 is defined to be a specified percentage of the Building Service Charge and a different percentage of the Estate Service Charge": see the definition of "Service Charge" in clause 1.1 at [110].

23. That disrepair is within the meaning of the phrase "the structure of the Building" as defined by clause 1.1 of the Lease as it is to the roof and main external and load bearing walls: see [111].

24. The Manager (as defined in the Lease) covenanted to provide "the Services" to the tenant: see clause 24 of the Lease at [118]. The term "Services" is defined to mean "the Estate Services and the Building Services": see clause 1.1 of the Lease at [111]. "Building Services" are defined to mean the services listed in part 2 and part 4 of the Fourth Schedule to the Lease: see clause 1.1 of the Lease at [108]. Paragraph 1 of the Fourth Schedule further defines "Building Services" to include "maintaining redecorating and keeping in good repair and condition (as appropriate) the Structure of the Building": see [121]. The "Building" is defined by clause 1.1 to mean "the building comprising the 255 apartments the Car park and Common Parts to be known as Airpoint etc": see [108].

25. For the purpose of service charge demands, the Building must be distinguished from the definition of "the Estate" in clause 1.1 as "the land and premises registered under Title number AV180790 known as Land and Buildings lying to the south east of West Street Bedminster which includes the Building": see [109]. A copy of Title number AV180790 is at [82—122] but without the title plan. The entry was dated 25 June 2015.

26. One issue raised by the Applicant is whether the existence of an insurance policy with Premier Guarantee (underwriters at Lloyds) and a claim on behalf of lessees upon that policy prevents the sums demanded becoming payable as service charge: see his letter of June 2015 at [48]. Under many modern leases with standard service charge provisions this would be an unarguable defence to a claim for service charges. The provisions of the Fourth Schedule in the Lease however means this issue is not as clear cut as might be expected in a modern lease.

27. Part 4 of the Fourth Schedule to the Lease lists costs which can be debited to service charge applicable to the services provided and listed under parts 2 and 3 of Schedule 4: see [123 -124]. Paragraph 13 of Part 4 of the Fourth Schedule contains the following head of cost which is properly debited to service charge.

> "maintaining and properly and conveniently managing and running the Estate including in particular and without prejudice to the generality of the foregoing any expense incurred in rectifying or making good any inherent structural defect in the Estate (except insofar as the cost is recoverable under any insurance policy for the time being in force or from a third party who is or who may be liable for it" see [123 -124].

28. This must be contrasted with (and generally taken to be different from) the head of cost in paragraph 1 of part 2 to the Fourth Schedule entitled Building Services which (as mentioned) reads ""maintaining

redecorating and keeping in good repair and condition (as appropriate) the Structure of the Building": see [121].

29. The duties of the Manager under the Lease have now been taken over and are owed by the Respondent as an RTM Company: see section 96 of the Commonhold and Leasehold Reform Act 2002.

The need for the proposed works and whether they are part of the Estate Service Charge

30. The Tribunal turns to consider the need for repair and whether (assuming the repair is part of the Estate service charge) it is due to a structural defect within the meaning of paragraph 13 of part 4 of the Fourth Schedule to the Lease.

31. The various reports of RSW Roofing (dated 23 September 2013 at [132-136]) and from AJ Hodges Associates Chartered Building Surveyors including that dated 08 November 2013 at [140-148] provide clear and compelling evidence of disrepair and the pressing need for works of repair to the roof elevations and associated structures including the atrium.

32. The Respondent in its Statement of Case submitted at [74] that the conclusion of the reports at [130-155] was, in broad terms, that the water ingress was caused by a combination of:

> "Poor detailing to several junctions on the roof area
> Knife cuts to the Sarnafil roofing membrane, potentially caused during
> the installation of a running track on the roof terrace of the building.
> Other defects to the roofing membrane
> Water tracking under fixings for the balustrade around the roof area
> A failure of the mastic sealant used during construction
> Insufficient up-stand and drip heights"

33. The Applicant has accepted that "repair" work to the roof is required in his letter received on 15th June 2015: see [48-49]. He does not refer to the works to the elevation or to associated structures. The Tribunal finds that it is incontestable that balustrading work is also required: see from AJ Hodges Associates Chartered Building Surveyors including that dated 19 December 2013 at [149-155]. The need for works to brick elevations is apparent from the specification sent out to tender in paragraph 3.7 (among other places) at [207]. Works to glazed atrium were specified and considered in paragraph 3.6 of the specification: see the tender report at [187].

34. The causes of the loss identified by claims agents appointed by Premier Guarantee in its e-mail of 09 January 2013 at [163] were identified as 6: Water ingress, weather proof surface coating failure, defective previous leak repairs, unconnected drain, leaks in car park and defect to car park podium roof and algae staining. This e-mail is of little value in assessing whether any of the causes were structural defects within the meaning of paragraph 13 of part 4 to the Fourth Schedule to the Lease, not least because it was prepared before investigations were carried out and was also prepared on behalf of insurers who had a financial interest in resisting a claim under a policy.

35. The Tribunal has considered the reports of AJ Hodge Associates which are a more reliable guide to whether the costs are due to a structural defect. Broadly Mr Hodges identifies failures in detailing of balustrading and capping, down standing edges (see [151]). Rotting to timber boarding appears to have been caused by the failure of detailing: see [153]. The failure of detailing is a failure of construction/application during the refurbishment works and not a structural defect. The Tribunal concludes that the causes of the disrepair and need for works are not a structural defect within the meaning of paragraph 13 of part 4 to the Fourth Schedule to the Lease.

The nature of the sums demanded as service charges

36. It is apparent from the reports of AJ Hodges Associates referred to that the works done in 2013 were works of investigation.

37. The Respondent's submission in its written Statement of Case dated 2nd July 2015 at [70-78] was that the interim demands that have been made were for collecting a reserve fund: see paragraphs 35-38 at [77]. Unfortunately that submission is not clearly reflected in the terms of the written demands in issue at [237] and [239] which (on one reading) appear to treat the sums sought for Quarterly Reserve Fund demands separately from sums described as "Roof and Elevation works".

38. However, the Respondent has indicated that in both instances, the sums demanded were initially used to build up a reserve fund and this is reflected in the final year accounts for 2014, prepared in June 2015. The Tribunal has not been provided with a copy of those accounts. The Tribunal notes that the Applicant has not taken issue with this part of the Response statement. Solely for the purposes of this application (to which other lessees are not a party) the Tribunal accepts on the balance of probabilities the sums demanded were later treated by the Respondent as a collection to a reserve fund towards the cost of roof and elevation works to instruct a contractor. The Tribunal is not satisfied that the sums were demanded as such: see paragraphs 67-68 of this Decision.

39. Collection of a reserve fund is authorised as part of "service costs" defined in clause 1.1 at [110] for "(d) such reasonable sum as the manager may in its absolute discretion consider appropriate to provide a reserve to meet all or any of the costs charges expenses and liabilities referred to

in the preceding sub clauses". This refers to the Estate Services and the Building Services. Clause 24.2 also authorises the creation of a reserve fund: see [118]. Even if the sums in issue were not demanded were a collections toward Reserve funds, the Respondent would have been entitled under the terms of the Lease to later allocate them as such.

40. Even if that is incorrect the Tribunal notes the detailed investigatory works which have been carried out and the tendering process that has taken place. The projected cost of the works are at figures spanning between £541,873 and £636,207: see statement of Estimates at [178]. The sums would be properly demanded under the Lease as the part of the cost of proposed roof and elevation works even if they were not due to be expended or the cost incurred in the service charge years in which they were demanded: see paragraph 6 of Part 1 of the Fourth Schedule at [121]. The Lessee (here the Applicant) is not entitled to object to the Service Charge on the ground that any part of it is attributable to future expenditure and not to actual expenses incurred in the current Financial Year.

41. Whether those sums were reasonable sums to demand under section 19 of the Act is considered separately.

The Tribunal's decision on whether the sums demanded claims are authorised under the terms of the Lease

42. The Tribunal concludes that the two sums demanded of £1,451.84 were authorised by the Lease.

Are the sums demanded reasonable in amount to the extent that they reflect costs yet to be incurred?

43. The Tribunal assumes that £1,451.84 reflects 0.433 per cent of the Building Service Charge as specified in the definition in clause 1.1 at [110]. This translates to a demand total costs in the region of £171,001, assuming the percentages add up to 100%.

Decision - whether the sums demanded are reasonable in amount to the costs yet to be incurred

44. The Tribunal concludes the sums demanded are reasonable sums to demand in advance given the anticipated cost of the works. It is noted the Applicant makes no objection to the amount of either sum.

Were the amounts demanded reasonable for costs incurred?

45. The Respondent does not allege that the sums demanded were for costs incurred. This issue does not arise.

Compliance with section 20 of the Act

46. This is one of the principal issues raised by the Applicant who asserts that he was not consulted about the decision under section 20 with regard to proposed roof repair. The main point made is that correspondence was incorrectly addressed to him at the premises (303 Airpoint) and not to his address at 43 Conway Road Bristol BS4 3RE. This point was made in his letter received on 15th June 2015 and in his undated letter received on 07 September 2015. In the second letter he said as follows:

> "Prior to Blenheims managing the property it was done by Andrews who had my correct address in 2012 and continue to have my correct address now. Although I am not actively involved in the hand over between the two companies I am surprised that my address details were not passed over at this point.
> After leaving Airpoint I diverted my mail for a period of 6 months and notified Blenheims that they had the wrong address for me as they continued to write to me at 303 Airpoint.
> I notified them a second time at the beginning of 2013 as I was informed that my standing order for the service charge was for the incorrect amount and it needed changing. Despite having notified Blenheims of my change of address this correspondence was sent to Airpoint, when I picked it up during a routine flat inspection. At this point I also updated them on my email contact details as well as my correct mailing address.
> I notified them for a third time when I got the unexpected invoice for the roof repair via an email chase on the 4th of July 2014, as confirmed By Sally at Blenheims."

47. The Tribunal has not had the benefit of seeing Mr Collin but notes that the documents produced in the bundle show the following history:

29 11 2013	First notice of intention to carry out roof works: see [165]
29 01 2014	2 letters covering letter and stage 1 notice of intention sent to "Mrs and Mrs D Colin at 303 Airpoint" [165-167]
10 04 2014	2 letters from Blenheims stage 2 statement of Estimates and Notice of Annual General meeting of Airpoint Residents Association and Airpoint RM Company Limited [176-178]
23 06 2014	Letter Blenheims enclosing first demand [236-237]
	All the above addressed to the premises
01 07 2014	E-mail received from Blenheims by Mr Collin referring to Roof and Elevation works [50]
04 07 2014	E-mail sent to Blenheims (copy unseen) [244]
18 12 2014	Demand sent to 43 Conway Road Mrs and Mrs D Collin [239-240]

48. The Tribunal's task is to decide whether the Respondent gave the notices required by the stage 1 and stage 2 (notice of intention and statement of estimates) required by the Consultation Regulations (Schedule 4, part 2). No contract has been entered into, so the requirement of a stage 3 notice does not apply.

49. The issue of whether a notice has been given is decided on the balance of probabilities, what is more likely than not.

50. There is nothing in the Consultation Regulations which requires that the Notice has to be at a particular place or by a particular method.

51. Clause 26.7 of the Lease at [119] concerns the giving of notices and provides (in its material parts):

> "The provisions of the Law of Property Act 1925 section 196 as amended by the Recorded Delivery Service Act 1962 shall apply to the giving and service of all notices and documents under or in connection with this l, except that in section 196 the final words of section 196(4) " and that service.... Be delivered" shall be deleted and there shall be substituted "and that service shall be deemed to be made on the second working day after the registered letter has been posted...
>
> And any notice or document shall also be sufficiently served if sent by telex facsimile transmission or any other means of electronic transmission to the party to be served... and in the case service shall be deemed to be made on the day after of transmission of transmitted before 4 pm on a working day..."

52. Section 196 of the Law of Property Act 1925 provides (in its material parts):

> "196.— Regulations respecting notices.
>
> (1) Any notice required or authorised to be served or given by this Act shall be in writing.
>
> .....
>
> (3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned [by the postal operator (within the meaning of [Part 3 of the Postal Services Act 2011] 2) concerned] undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered."

53. The Applicant accepts that he lived at 303 Airpoint for a period of time in his e-mail of 07 September 2015. He does not specify when he left but the overall meaning appears to be that he left before 2013. He says that he "notified" Blenheims that they had the wrong address after he left and a second time at the beginning of 2013. Unfortunately he does not produce any copies of letters or e-mails confirming the date of his communications. Nor is it clear, despite Sally Robinson of Blenheims raising the issue explicitly in her witness statement, that when he uses the word "notify" he means that he sent them notice in writing or in a telephone or other conversation or other communication.

54. It is evident from the excerpt of the e-mail at page [50] that Blenheims had his correct e-mail address. It follows that the Applicant also had their contact details and could have e-mailed them his correct contact address.

55. It is also likely the Applicant would have received other e-mails from Sally Robinson or Blenheims during late 2013 and the first part of 2014 before the e-mail which he produces dates 01 July 2014 [50]. The e-mail of 01 07 2014 at [50] is clearly written on the basis that there had been earlier notification or discussion of roof and associated works. The Appellant does not suggest that this was the first e-mail contact or that this was the first notice he had that the work to the roof needed to be carried out. His complaint is that he was being asked to pay before the insurance claim had been resolved: see page [10] (part of his application form). Indeed it is clear from the letter of 29 January 2014 at [165] that there had been an earlier communication and notice of intention to carry out works on 29 November 2013. The Applicant does not dispute knowing of the need to carry out roof works.

56. The Applicant gives no detailed information about what happened to the letters of 29th January 2014, 10th April 2014 and 23rd June 2014. There is no supporting evidence from his co-lessee who may have been his wife about what happened to that correspondence, which was also addressed to her. There is no evidence from anyone else about what happened to that correspondence and whether and if so when he received it.

57. The Applicant refers to a "routine flat inspection" in 2013 when he picked up correspondence. The Tribunal concludes it is extremely unlikely that neither he nor someone on his behalf visited the premises between 2013 and 23rd June 2014. This Lease was a valuable asset and

potentially a liability. According to his evidence the Applicant's correct address was in the same city in Bristol where he could be assumed to be contacted.

58. The Tribunal finds that on the balance of probabilities, the Applicant did not notify Blenheims in writing (whether by e-mail or otherwise) that his address had changed until 04 07 2014. As a consequence, before that communications including letters of 29th January 2014, 10th April 2014 and 23rd June 2014 were delivered to the premises. The Applicant has given no explanation why he would not have received such correspondence on the footing that it had been delivered to the premises or when he would have done so.

59. The Applicant says in his undated e-mail received on 07 September 2015 (responding to paragraphs 5-15 of Sally Robinson's statement) was that Andrews the previous managing agents acting for the landlord before the RTM company took over "had my correct address in 2012". He does not produce any evidence to substantiate that assertion or an explanation for not doing so. He does not identify the name of the person or persons at Blenheims to whom he says he notified his change of address or the date of notification, which he says took place in 2013.

60. The evidence of Sally Robinson in paragraph 14 of her statement on this issue was as follows:

> "14 This firm was instructed by the Respondent to manage the Block in place of Andrews from July 2012. Following our appointment, we were provided with a list of all the leaseholders within the Block and their contact addresses from Andrews. That list provided that the correspondence address for the Applicant was at the Property"

61. The Applicant has had the opportunity to produce some evidence confirming the date and manner in which he notified his change of address to both Messrs Andrews and to Blenheims. He has omitted to do so. The Applicant is clearly an intelligent and articulate person who was able to respond to the need to comment upon paragraphs 5-15 of Sally Robinson's statement promptly and clearly. The absence of such evidence confirming his assertions or his recollection against the background set out in this decision means on the balance of probabilities the Applicant did not communicate his new address to Blenheims, or if he did so he did it in such a manner that the message was not effectively passed on or recorded. The Tribunal is unable to infer (as the Applicant invites it to) that Blenheims were at fault in recording, or in some way ignored or mislaid his correct address which is said to be 43 Conway Road Bristol.

62. The Tribunal accepts the evidence of Sally Robinson when she says that Blenheims had no records of the Applicant telephoning or e-mailed their offices notifying a change of address before July 2014 in paragraph 16 of

her statement. (The reference to July 2015 in paragraph 17 of her statement is clearly an error for 2014).

63. The Tribunal finds that in relation to Airpoint RTM Company Limited in 2014 the last known address of the Applicant was the premises for the purpose of clause 26.7 of the Lease and giving of notices under section 20 of the Act.

64. Accordingly, the Tribunal finds as follows. The letters of 29th January 2014, 10th April 2014 and 23rd June 2014 were each delivered to the premises at or shortly after the date upon them and were deemed to have been given as notices to the Applicant on the second working day after the date of posting.

65. That delivery amounted to giving of notice for the purposes of section 20 of the Act and the Consultation Regulations.

Does section 20 of the Act apply to the demands for the sums claimed?

66. The Respondent argues the sums were not sums claimed for qualifying works until they were expended as they were sums demanded for a reserve fund: see paragraphs 34-35 of the Response at [76-77]. Paragraph 35 reads as follows:

> "Until the sums are actually expended (works have not yet commenced due to on-going investigations) nothing has been spent on qualifying works and the Respondent has simply collected a reserve fund, such that section 20 does not apply"

67. Several issues arise from this. Firstly there is no witness evidence from or on behalf of the Respondent that the sums demanded were for reserve fund. As previously mentioned the demands at [237] and [239] are not necessarily consistent with a demand for sums to be paid to the Reserve Fund. Secondly, although accompanying letter of 23 June 2014 at [236] refers to sums being allocated from Reserve Fund, this refers to existing "Reserve Funds", not seeking new contributions to a Reserve Fund. Accordingly the Tribunal is unable to find on the existing evidence that the demands were for sums towards Reserve Fund.

68. The term of the demands for the sums in issue were unequivocal "Roof and Elevation Works".

69. In any event if the sums were demanded as part of Reserve Fund towards qualifying works (roof and elevation works) the fact (if it was the position) that the sums were not to be expended immediately or in the near future upon qualifying works does not take these demands outside the provision of sections 20(1) 20(2) and 20(3) of the Act which provide:

"20(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

.....

(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"

70. It appears to be accepted that the relevant costs will exceed the appropriate amount and that those costs will be incurred. Accordingly in principle section 20 would apply even if the sums demanded were for a reserve fund for the purpose of funding qualifying works. There may be cases where the contribution sought to a Reserve fund is so general or relates to qualifying works that may not be carried out for many years. Different considerations might apply there. Here the Blenheims' letter of 23 June 2014 confirms that the sums demanded were for works which were due to commence in Spring / Summer 2015 and were in respect of those qualifying works. The Tribunal concludes that section 20 would apply to the demands whether or not they were initially treated as Reserve Fund.

Time to pay

71. The Applicant requests the Tribunal orders the Respondent to give the Applicant additional time to make payment. Section 27A of the Act does not give the Tribunal any power to make such an order to adjust the rights of the parties in relation to the time of payment: see *Southend on Sea BC v Skiss and others* LRX 110/2005 (2006). The Tribunal is unable to make such an order.

Refund of fees

72. The Applicant made an application for a refund of fees that he had paid in respect of the application. Taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant. The Applicant has been unsuccessful and it would not be fair or equitable for him to be reimbursed in those circumstances.

Name: H Lederman
Tribunal Judge

Date: 10th September 2015

RIGHTS OF APPEAL

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" 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.

(2) The relevant costs are 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.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) 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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(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) the appropriate 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.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(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 a 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 subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.