12093

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LSC/2012/0803** **LON/00AG/LVM/2013/0001 &** **LON/00AG/LVM/2014/0012**
Property	:	**66 Rosslyn Hill, London NW3 1ND**
Applicants	:	**(1) Mr Issac Sadeh** **(2) Ms Deborah Kol** **(3) Ms Caroline Ebborn**
Representative	:	**Ms Deborah Kol & Mr Robert Zweep**
Respondents	:	**(1) Mihran and Azniv Essefian Charitable Trust;** **(2) Mrs Mary-Anne Bowring (Ringley Chartered Surveyors)**
Representative	:	**(1) Ms Stephen Ovanessoff (for the Trust);** **(2) Mrs Mary-Anne Bowring (in person);**
Type of application	:	**To determine the reasonableness and payability of service charges and administration charges**
Tribunal members	:	**Judge Timothy Powell** **Mrs Sarah Redmond MRICS** **Mrs Jackie Hawkins**
Date of hearing and venue	:	**25 August 2016 at** **10 Alfred Place, London WC1E 7LR**
Extended date for further submissions	:	**19 October 2016**
Date of decision	:	**16 December 2016**

DECISION

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Summary of the tribunal's decisions

Within 28 days of the date of this decision:

(i) The first respondent (the former freeholder) shall pay to the applicants (the current residential lessees) the sum of **£274**; and

(ii) The second respondent (the former tribunal-appointed manager) shall pay to the applicants the sum of **£2,719.33**.

The above payments arise from the following determinations made by the tribunal, which are explained in detail later and are summarised in a table at the end of the decision. The amounts given below in this Summary are global sums, refundable to all lessees in the building, but the proportion due to the applicant residential lessees is two-thirds of these sums:

(1) The lessees do not benefit from the Property Owners Liability element of the Zurich/Willis or the AXA/Towergate buildings insurance policies and, therefore, the first respondent must refund £250 to the lessees in respect of the 2011 policy, and £161 for the 2012 policy (which the freeholder arranged and paid for, even though it was after the coming into force of the management order); and the second respondent, the tribunal-appointed manager, must refund £161 in respect of the 2013 policy;

(2) The commercial weighting on this buildings policy reflected a normal-risk commercial occupier; and there was no additional commercial weighting to the premium, to reflect the use of the premises as a dry cleaning business. Therefore, no refund is due to the lessees in respect of this item;

(3) The sum of £200 is a reasonable sum for an accountant to charge for the preparation of a statement covering two years' worth of service charges. Indeed, it is wholly unexceptional and the tribunal therefore allows this sum, which is reasonable and payable by the lessees. Therefore, no refund is due to the lessees in respect of this item;

(4) The charge of £294 for an asbestos report is reasonable and payable by the lessees. Therefore, no refund is due to the lessees in respect of this item;

(5) The charge of £204 for the cost of carrying out fire and other risk assessments is reasonable and payable by the lessees. Therefore, no refund is due to the lessees in respect of this item;

(6) The accounts include £300 for the preparation of a section 20 consultation notice by the manager. This charge has already been found to be not reasonable and not payable by the lessees, by HHJ Huskinson in his decision of 17 August 2015 (see paragraph 37). It should therefore be removed from the accounts and refunded to lessees by the former manager;

(7) The charges for Ringley's 2013 legal fees are not recoverable and, therefore, the sum of £2,868 should be refunded to the lessees by the former manager;

(8) Of the total £3,675 management fees charged by Mrs Bowring for the two years of her appointment, the sum of £2,925 is reasonable and payable for the two-year period of her appointment, so that the manager should refund to the lessees the sum of £750;

(9) The tribunal declines to award costs or to order a refund of fees, in the total sum of £3,923, as claimed by the applicant lessees against the former manager;

(10) The tribunal declines to award costs or to order a refund of fees, in the total sum of £1,600 plus VAT, as claimed by the former manager against the lessees;

(11) The tribunal makes an order under section 20C, so that none of the manager's or freeholder's costs can be passed through the service charge.

Background

1. This case has a long and convoluted history that is well-known to the parties and fully described in previous decisions, both of this tribunal and of the Upper Tribunal (Lands Chamber). It concerns the tribunal's appointment of Mrs Mary-Anne Bowring, of Ringley Chartered Surveyors ("Ringley"), as the manager of 66 Rosslyn Hill, London NW3, for the two-year period between 4 August 2011 and 4 August 2013.

2. The building at 66 Rosslyn Hill comprises commercial premises on the ground floor (a dry cleaner) and three residential leasehold flats on the first, second and third floors above. The applicants are the three residential lessees of the flats; the first respondent is the former freehold owner of the building, having disposed of its freehold interest in December 2013; and second respondent is the former tribunal-appointed manager.

3. Previous disputes between the applicants and the respondents reached the Upper Tribunal in the summer and autumn of 2015. In two decisions, dated 17 August and 14 October 2015, respectively, the following issues were remitted to this tribunal:

   By HHJ Huskinson, in [2015] UKUT 0428 (LC), LRX/7/2014:

   By paragraph 54 of the decision, the case was remitted to this tribunal

for a fresh hearing, for it to decide the following points, namely:

> *"(a) The question of the management charges and the complaints made by the appellants [the leaseholders] against Ms Bowring as manager and receiver;*
>
> *(b) The amount of the insurance premiums properly chargeable through the service charge so far as concerns the arguments based upon property owners liability and upon commercial weighting (these points should be decided upon the basis set out in paragraphs 39 and 42 above)."*

By HHJ Gerald, in [2015] UKUT 0530 (LC), LRX/138/2014:

By paragraph 38 of the decision, the case was remitted to this tribunal for a fresh hearing, for it to determine:

> *"Precisely how much is now outstanding [from the manager to the leaseholders] ... after the final accounting has been provided and any challenges thereto resolved"*

and, by paragraph 29:

> *"...if there is a surplus order the manager or receiver to pay that over to the tenants or other appropriate parties."*

4. Directions were given by this tribunal, which resulted in the filing of final accounts by Mrs Mary-Anne Bowring, with supporting invoices and other documents, and the completion of a Scott schedule by the parties, setting out the items in dispute with their comments.

The law

5. The tribunal's powers to determine the reasonableness and payability of service charges, including in this case those levied by the tribunal-appointed manager, are contained in sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended), which are set out below:

> "**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) [...]

(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."

The hearing

6. The hearing of the remitted matters took place on 25 August 2016. It was attended for and on behalf of the applicants by Ms Deborah Kol, Mr Robert Zweep (for Mr Sadeh, who could not attend) and Mr P Wolgen (observing). Mr Stephen Ovanessoff attended on behalf of the first respondent and the second respondent, Mrs Mary-Anne Bowring, attended in person, accompanied by Mr Dominic Ford (observing).

7. At the end of the hearing, a timetable was set for further written submissions to be made on the issue of costs and on the application for an order under section 20C of the Landlord and Tenant Act 1985. That timetable was extended to 19 October 2016; and this decision is made in the light of all the evidence, documentation and submissions received.

Tribunal's determinations

1. The insurance premium

8. There were two separate issues in relation to the reasonableness of the insurance premiums:

   (i) First, was that part of the premiums attributable to property owners' liability reasonably incurred and, if not, how much was attributable to such liability? In short: if the property owners' liability covered the applicants, as lessees, it would be payable; if it did not do so, then it would not be payable by them;

   (ii) Secondly, was there some addition to the building insurance premiums which represented a high-risk use of the commercial premises on the ground floor of the building (in use as a dry cleaner), over and above a normal commercial risk use of the ground floor? If not, the premium is payable in full; if there was an addition for high risk use, the amount should be ascertained and should be removed from the amounts payable by the applicants.

(i) Property owners' liability

The lessees' submissions

9. The lessees challenged the insurance premiums for 2012 and 2013, insofar as they contained an element in respect of property owners' liability ("POL"). The 2012 policy was placed with Zurich Insurance plc, through the brokerage of Willis Limited; and the element for POL was £161, inclusive of insurance premium tax ("IPT"). The 2013 policy was taken out with AXA, through the brokerage of Towergate Risk Solutions. The element of the premium referable to POL in that policy is not known but, for the purposes of this decision, it is taken to be a like sum of £161, inclusive of IPT.

10. In addition, the lessees sought a ruling that the first respondent, the former freeholder, should be responsible for refunding an additional £250, being the POL element of the 2011 Zurich/Willis insurance policy, in force at the time that the management order came into affect, on 4 August 2011.

11. The lessees' detailed submissions are set out by HHJ Huskinson in his decision of 17 August 2015, and were repeated by the lessees in their submissions to this tribunal.

12. In his decision of 17 August 2015, HHJ Huskinson has already decided, in paragraph 39, that the landlord's obligation in the lease to insure is an obligation to insure the building against various risks, but this does not include placing insurance in respect of personal liability as an

occupier, or as an owner of the building. However, he goes on to say that clause 3(5)(f) of the lease, which enables the landlord to do such other acts, matters and things as in its absolute discretion may be necessary or advisable for the proper maintenance, safety and administration of the building, is sufficiently widely drafted to enable the landlord to extend the buildings insurance cover, so as to include POL.

13. HHJ Huskinson concluded that the part of the insurance premium which is properly attributable to POL was reasonably incurred, and would form part of the service charge costs, provided that the POL extended to cover the applicants. The task that he set this tribunal was to consider the full documents and evidence submitted on behalf of Mrs Bowring and to make a specific finding upon the terms of the policies, as to whether or not the POL cover extended to the leaseholders.

Mrs Bowring's evidence and submissions

14. In oral evidence, Mrs Bowring said it was standard commercial practice for public liability cover to be included in all "commercial" insurance policies, which she defined as those policies covering property with common parts. Mrs Bowring relied on the "general interest clause" in the Zurich/Willis policy, which made explicit reference to noting the interest of lessees and others in the insurance provided. She said that this was a practical step taken by the insurance industry, so that lessees' interests would be included in policies automatically, without having to note individual names on the policy, which in certain larger properties would be a very onerous task.

15. Mrs Bowring said the whole Zurich/Willis policy is subject to this "general interest clause". As property managers, they have a thousand such policies and that, in her experience, lessees are covered for public liability matters. Mrs Bowring said that any public liability claim would be made against the insured in the first place (the former freeholder in this case). However, if a claim were made against a lessee, the claimant would ordinarily be referred to the freeholder to claim on the buildings policy.

16. Mrs Bowring said that the lessees were not expected to provide public liability insurance for their own visitors. The buildings policy covers that: otherwise, she said, flat contents policies would routinely include POL cover. In any event, lessees benefit directly, because they or their visitors would be able to make a claim under the policy themselves, if they were injured in the common parts controlled by the freeholder.

17. The tribunal then went on to consider the documentary evidence in detail.

The Zurich/Willis policy

18. The Schedule of Insurance in respect of the 2012 Zurich policy states that the "Insured" is the first respondent, i.e. the "Mihran and Azniv Essefian Charitable Trust (and Subsidiary and Associated Companies declared to Insurers)". The "Business" of the Insured is said to be "Property owners investors managers traders and developers and all activities and ancillary thereto and any other activities declared to Insurers".

19. Details of the insurance are found in the Insurance Policy document provided by Willis Property Investors Division; and this is the contract by which "...the INSURERS agree to provide insurance in the manner described and set out in this POLICY...". The document is divided into several sections, including: general policy definitions; general policy conditions; section 1, relating to property damage and rent insurance (with two sub-sections); section 2, relating to terrorism insurance; and section 3, relating to legal liabilities insurance (with four sub-sections).

20. Under the general policy definitions, the "Insured" is defined (on page 9) as follows:

> "INSURED means the person persons entity or entities specified in the Schedule."

21. One of the general policy conditions (on page 12) states that:

> "A person who is not a party to this contract has no rights under the UK Contracts (Rights of Third Parties) Act 1999 (and subsequent legislation) to enforce any term of this contract but this does not affect any right of remedy of a third party which exists or is available apart from that Act."

22. Section 1 of the policy document relates to property damage and rent insurance (pages 13 to 34, inclusive). The definition of "Buildings" applicable to this section (on page 13) is as follows:

> "BUILDINGS means buildings (including foundations) all alterations improvements extensions repairs therein and thereon including the following:
>
> - landlord's fixtures and fittings ... and tenant's improvements
> - furnishings and other contents of common parts of the buildings ...
> - building management and security systems ...
>
> All the property of the INSURED or for which they are responsible or leased by the INSURED either as lessor or lessee and where the INSURED are responsible for arranging insurance (or in respect of Sub Section 1(B) Rent where the INSURED receive RENT in respect of such property."

23. After the definitions, general exclusions and conditions relevant to this section, the policy sets out the Cover Clauses also relevant to the section. These include a heading "Other Interests" (on page 19), beneath which it states:

> "The interests of freeholders lessees underlessees assignees and/or mortgagees of BUILDINGS are noted in the insurance provided subject to their names being disclosed to INSURERS by the INSURED in the event of any claim arising."

24. Therefore, so far as the insured risks to the building are concerned, it is clear that the applicant lessees may also benefit from the insurance taken out in the respect of the building by the insured first respondent, the former freeholder.

25. **Section 3** of the policy relates to legal liabilities insurance. The definitions page (on page 38) defines "Business" as follows:

> "BUSINESS means:
>
> a) the Business described in the Schedule ...
>
> e) the ownership occupancy repair maintenance or decoration of PROPERTY by the INSURED ..."

The word "PROPERTY" does not appear to be defined in the Policy document, although "PREMISES" are defined (on page 9) as: "the premises specified in the Schedule and (unless stated to the contrary) other premises as described in certain Cover Clauses." Under the heading "Section 1 - Property Damage and Rent Insurance" the Schedule of Insurance defines "PREMISES" as "Any location declared to and accepted by INSURERS".

However, for present purposes, the key difference between section 1 and section 3 of the policy document is that there is no equivalent reference in section 3 to "Other Interests" (i.e. lessees' interests) being noted in the insurance provided, as in section 1.

26. Sub-section 3(B) (on pages 46 to 49, inclusive) is the public and products liability insurance sub-section of section 3. "The Cover" is defined (on page 46) as follows:

> "1) The INSURERS will indemnify the INSURED for all sums which the INSURED becomes legally liable to pay as damages and claimants costs and expenses in respect of or arising out of:
>
> a) PERSONAL INJURY to any persons
>
> b) DAMAGE to PROPERTY
>
> c) obstruction interference with traffic loss of amenities trespass nuisance or any like cause happening anywhere in the world during the PERIOD of INSURANCE in connection with the BUSINESS"
>
> 2) The INSURERS will also pay all LEGAL COSTS".

27. In the "Additional Cover Clauses", the policy provides for "Indemnity to Other Persons" (page 48), by which "For the purpose of this Sub Section the following are also indemnified as if they were the INSURED." The list then includes partners, directors, any employee, administrators of the Insured and the like. The list does not include any lessees, although it does include:

> "e) any party including any principal whom under contract agreement the INSURED has agreed to indemnify and/or insure but only to the extent required by such contractual agreement."

28. This does not include lessees because, by the terms of the lease, the landlord's obligation is only to insure the building, not the individual lessees, and there is no requirement in the lease for the landlord to indemnify lessees at any point. On the contrary, by clause 5(6) of the lease:

> "The Lessor shall not be responsible to the Lessee or the Lessee's licensees servants agents or other persons in the demised premises or calling upon the Lessee for any accident happening or injury suffering or damage to or loss of any chattels or property sustained on the demised premises or in the Building."

29. Whether such a clause could survive a challenge under the Unfair Contract Terms Act 1977 is not for this tribunal, but the clause would appear to have some relevance in relation to the question of the extent of insurance cover.

The AXA/Towergate insurance policy

30. The AXA policy was arranged through the brokerage of Towergate Risk Solutions ("Towergate") and, once again, the insured is the first respondent Trust. A copy of the policy was provided at the hearing. It is described as a "Property Investors Protection Plan Policy." It is similar in layout to the Zurich/Willis policy document, in that there are introductory sections including defined terms and general policy conditions, followed by five sections of cover, namely: buildings, rental income, public liability, employers' liability and terrorism.

31. The "Building(s)" is defined (on page 5) as: "Buildings at the premises shown in your schedule..." and "premises" are defined as "the address(es) shown in your schedule" (being 66 Rosslyn Hill). The policy conditions include a "Third party rights condition" (page 9), which states: "The rights under this contract will not be enforceable by any party other than you or us because of the Contract (Rights of Third Parties) Act 1999."

32. Section 1 of the AXA policy relates to buildings and confirms that any damage to the buildings in the schedule are covered by the insurance.

The "Defined peril" includes, for example, fire, lightning, explosion, aircraft or other aerial devices or articles dropped from them ....", etc.

33. Similar to the Zurich/Willis policy, the AXA policy contains a clause relating to "Mortgagees and other interests cover" (page 19), which states that:

> "The interest of the leaseholder(s), mortgagee(s) and tenant(s) in the individual portions of the buildings is noted and should be advised to us in the event of the claim."

34. **Section 3** of the AXA policy deals with public liability and it specifies its own "Meanings of defined terms" (page 35). One of these terms is the "Claim costs" that are covered in this section (page 35), which include the: "Costs and expenses ... of any claimant which you become legally liable to pay...". "Financial loss" is also defined (page 36) as being:

> "Loss not accompanied by or as a result of bodily injury, personal injury or property damage but you have caused to anyone who has a lease agreement with you in connection with the business arising out of a defect or the unsuitability of the property let or your failure or partial failure to let the property or provide the agreed services."

35. Under "What is covered" (page 37), it states:

> "We will cover the amount of damages which you are legally liable to pay in respect of
>
> 1. bodily injury
> 2. personal injury
> 3. property damage
> 4. nuisance or trespass
>
> occurring during period of insurance in connection with the business."

36. The "Personal liability cover" under this section (page 40) extends to the legal liability of "... any director or employed persons of yours whilst ... performing their normal duties in connection with the business" and "the spouse, civil partner, domestic partner or any children accompanying a director or employed persons in the course of a business trip or journey."

The tribunal's determinations

37. Both policies contain section-specific definitions, conditions, exclusions and (additional) cover clauses. Section 1 of each policy relates to property damage; and each one has a cover clause relevant to that section, which expressly includes lessees' interests. Section 3 of each

policy relates to POL; and each one has an additional cover clause relevant to that section, which expressly includes directors, employees and family members of the Insured, but does not expressly include lessees' interests. Apart from Mrs Bowring's oral evidence that, in her experience, lessees are covered for POL under the landlord's buildings policy, no independent evidence was adduced to establish that POL cover is to benefit lessees, in the same way as Property Damage clearly does.

38. Taking all of the above into account, and applying a natural reading to the policy documents provided, the tribunal determines that only the "Insured", i.e. the former landlord (and first respondent), benefits from POL in the two buildings insurance policies; and, therefore, the lessees of 66 Rosslyn Hill do not benefit, as lessees, from the personal liability/POL element of either policy.

39. It follows, therefore, that the first respondent must refund £250 to the lessees in respect of the 2011 policy and £161 for the 2012 policy (which the freeholder arranged and paid for, even though it was after the coming into force of the management order); and the second respondent, the tribunal-appointed manager, must refund to the lessees £161 in respect of the 2013 policy.

(ii) Commercial weighting

40. In his decision of 17 August 2015, HHJ Huskinson also remitted to the First-tier Tribunal the question raised by the lessees relating to the commercial weighting of the insurance premium. As this is a mixed-use building (commercial premises on the ground floor, with residential units above), HHJ Huskinson held that lessees are required to contribute to an insurance premium appropriate to a mixed-used building. He took the view that, so long as the commercial premises element was priced as "normal risk", the full amount would be payable. However, if that premium was higher, by reason of a "high risk" use of the commercial premises, the additional (high-risk) premium should not be payable by lessees. The task for the Tribunal was "to decide whether there was some addition to the insurance premium which represented a high risk use rather than a normal commercial risk use of the ground floor."

41. Ms Kol presented evidence in the form of e-mails dated 2012 from Mark Taylor, an account executive with Willis Limited, and dated 2016 from Jordan Carragher, a real estate underwriter with the Willis Group. Both of them confirmed that a hairdresser or a dry cleaner (the latter being the business carried on in the commercial premises at 66 Rosslyn Hill) were high-risk commercial activities. Mr Carragher said that such use "will have a major impact on the premium", though neither he nor Mr Taylor presented any figures or percentages. Crucially, Ms Kol did not present any evidence to prove that the insurance premium in this

case did, in fact, reflect such higher-risk use of the commercial premises, by way of an increased premium.

42. For her part, Mrs Bowring relied upon a letter dated 13 October 2015 addressed to Derry Maloney at Ringley from Robin Gleeson, the Area Sales and Property Director of Towergate, being the brokers who arranged for the AXA insurance policy at 66 Rosslyn Hill. Mr Gleeson stated in unequivocal terms that:

> "...when a residential property is above a commercial unit there is usually a weighting in premium as the commercial unit would be of more of a risk. Sometimes, higher than average risks bear more of a weighting than others (Hot Food Takeaway vs Newsagents for instance). In this case, I can confirm that there was no increase in weighting and the premium paid would be the same that could be expected if the property downstairs was, for instance, a low hazard shop."

The tribunal's determinations

43. Although the tribunal has no difficulty accepting the principle that a high-risk business may lead to a higher level of commercial weighting in the insurance premium, the evidence in the instant case does not support a finding that this has happened at 66 Rosslyn Hill. The tribunal prefers and accepts the direct evidence of Mr Gleeson that, in the present case, the commercial weighting on this buildings policy reflected a normal-risk commercial occupier; and that there was no additional commercial weighting to the premium.

44. Therefore, no refund is due to the applicants in respect of this item.

2. Accountancy fees

45. The former manager's accounts included a charge of £200 for MKO Outsourcing Ltd ("MKO"), for the preparation of the service charge statement for 2011 and 2012. The lessees were not prepared to pay anything for the 2011 accounts because, they said, those had been prepared by Mr Ovanessoff, the former freeholder's administrator, and had already been sent to them. All that MKO did was to lift and paste those figures onto a separate sheet and re-present them to lessees, steps which they described as "a self-serving exercise for [the] purpose of revenue generation" and "a sham".

46. Mrs Bowring had instructed MKO to prepare the statement of account from the figures provided to her by the former freeholder, after she had been appointed by the tribunal. The invoice itself is dated 11 June 2013 and is for MKO's "Professional fee in relation to the preparation of the service charge statement for 2011 and 2012."

47. The tribunal considered the accounts and the submissions put forward by Mrs Bowring in support of the £200 claimed; and the tribunal accepts that any professional accountant has to do their own independent check of figures received from a freeholder, before signing off the accounts. Insofar as there were subsequent questions about opening balances, this did not affect the exercise that the accountant had to go through. Nor can it be supposed that the figures were straightforward, given the some two hours spent by the tribunal at the beginning of the hearing, trying to understand the figures.

48. The invoice itself does not make a distinction between the work done in 2011 and that done in 2012; and there is no apportionment between the years. However, the tribunal's view is that £200 is a reasonable sum for an accountant to charge for the preparation of a statement covering two years' worth of service charges. Indeed, it is wholly unexceptional and the tribunal therefore allows this sum, which is reasonable and payable by the lessees. Therefore, no refund is due to the applicants in respect of this item.

3. Asbestos report

49. The accounts also included a charge of £294 for an asbestos report. The lessees objected to paying for this, as they had not seen a copy of it. However, they indicated in their schedule of disputes that they would agree to the £294, if a copy of a satisfactory asbestos report was provided to them and to the tribunal.

50. In the event, a copy of that report was included at Appendix 7 of the papers filed by Ringley, albeit an unsigned copy. Upon Mrs Bowring promising to provide a signed copy to Ms Kol within 72 hours, the lessees withdrew their objection to the £294. Although the lessees have complained recently that they have still not received a signed copy of the report, for the tribunal's part, it was satisfied with the unsigned copy as evidence of the work having been carried out, particularly as it was supported by a signed copy of a certificate for the identification of asbestos fibres, dated 11 January 2013, which was appended to the report.

51. Therefore, the tribunal concludes that the sum of £294 is reasonable and payable by the lessees; and no refund is due to them in respect of this item.

4. Fire and other risk assessments

52. The accounts included a charge of £204 for the cost of carrying out fire and other risk assessments. The lessees disputed this, as they had not seen any evidence as to the nature of the assessment, what work was carried out or a copy of the report. They stated that if a satisfactory

copy of the report was furnished to them and to the tribunal, and it is shown to be mandatory by law, then the lessees would agree to a reasonable amount for it.

53. Ringley included a copy of the assessment at Appendix 2 of their bundle. This was a document prepared by Mr Jonathan Bowman BSc dated 8 January 2013, following an inspection of the property. The document is in a standard format, but had been tailored to the property, and is some 29 pages long, including photographs.

54. The lessees said that this was first time they had seen the report. They were not satisfied with it, because they did not have it when they needed it. It had only been provided to the new managing agents in 2015 and they, the lessees, did not benefit from it.

55. The tribunal is satisfied that the inspection took place and that the report is an accurate reflection of the risk assessment carried out at the time. The tribunal also accepts that the findings of this report fed into the specification of proposed works that the manager was then in the process of putting together, with a view to carrying out a bundle of internal and external repairs and decorations of the property. The cost at £204 is patently reasonable for the work carried out.

56. Although it may have been good practice for the manager to provide the lessees with a copy of this report at a much earlier stage, when it was first requested, it is not always necessary for a manager to produce copies of each and every document relating to the property. In any event, the issue relating to the provision of a copy does not affect reasonableness of this item, which is payable in full by lessees. Therefore, no refund is due to the applicants in respect of this item.

5. Section 20 consultation notice

57. The accounts include £300 for the preparation of a section 20 consultation notice by the manager. This charge has already been found to be not reasonable and not payable by the leaseholders, by HHJ Huskinson in his decision of 17 August 2015 (see paragraph 37). It should therefore be removed from the accounts and refunded to lessees by the manager.

6. Ringley's legal fees (2013 tribunal proceedings)

58. The former manager's accounts included a charge for legal fees for £2,868 and copies of the relevant invoices were provided to the tribunal, in Appendix 6 of the manager's documents. The invoices are dated between 20 February 2013 and 15 May 2013 and are issued by Ringley Legal, Ringley's associated, in-house legal team. The invoices include the costs of preparing for a tribunal pre-trial review, the

preparation of a statement of case and evidence, drafting a reply to the lessees' statement, preparing a tribunal bundle, dealing with and preparing submissions and a skeleton argument. Some of the costs are broken down into time spent, which is charged at a rate of £150 plus VAT, though some of the invoices do not give this detail.

59. The lessees objected to paying any of these legal costs because, they said, there was no provision in the original management order, which would enable the manager to claim her legal costs against them.

60. Ms Kol said that the manager knew that the management order was insufficient for her to claim such legal costs because, by application dated 15 March 2013, Mrs Bowring sought an order varying the management order. The application was dealt with under reference LON/00AG/LVM/2013/0001 and the grounds for applying were that:

> "The order appointing the manager is lacking in detail as it does not deal with the Manager's ability to recover its legal costs arising out its responsibilities arising from the Leases of the Estate. The Manager requires a statement along the following lines:
>
> 'To take any legal action which the Manager is reasonably required to take, to make good such arrears, it being recognised that the Manager shall be entitled to an indemnity from the Service Charge Account in respect of any legal or other professional costs arising in connection with such action." "

61. Ms Kol said that, first, this variation only took effect from 26 July 2013 (being the date of the 2013 tribunal's decision), after all of the invoices claimed in the accounts. Secondly, the variation does not bite on those tribunal proceedings, which were brought by the lessees and were not "legal action" taken by the manager to recover arrears. Thirdly, the purpose of any such legal action was "to make good such arrears", but the accounts show that the lessees were not in arrears at the time, but were in credit.

62. Ms Kol also raised an argument that the variation of the management order in this way was *ultra vires* the powers of the tribunal, because the tribunal was a "no-cost" jurisdiction. However, as the Upper Tribunal had already refused the applicants permission to appeal against the variation made by the 2013 tribunal, that is not an argument this tribunal is willing to countenance. In any event, the tribunal is given very wide statutory powers upon appointing a manager under section 24 of the Landlord and Tenant Act 1987, including the ability to set the manager's remuneration (see section 24(5)(c)) and the tribunal is satisfied that the terms of the variation with regard to remuneration fell squarely within the ambit of the statute.

63. Ms Kol said that the lessees should not underwrite the business and performance risk of the tribunal-appointment manager. During the whole time of the management order, there was no culpability on the lessees' part. It was due to the manager's inadequate performance that the disputes had arisen. The lessees had had no choice but to come to the tribunal to try and resolve their dispute with Mrs Bowring; and they were entitled to do so. Ms Kol referred to paragraph 24 of the decision of HHJ Gerald, dated 15 October 2015, where he held that: "During the currency of the period of tribunal-ordered management, it is possible that disputes might arise. If they cannot be resolved by agreement the only port of call for their resolution is the F-tT."

64. For her part, Mrs Bowring complained that the lessees questioned absolutely everything that she did, to such a degree that it amounted to interference in her appointed role as manager of the building. She had been left with no alternative but to respond to every complaint made by the lessees and, in particular, to the tribunal applications made by them. She said that the lessees "were never happy". In any event, as tribunal-appointed manager, she was entitled to claim her costs of having to deal with tribunal proceedings by dint of her appointment, as had been confirmed by the Court of Appeal in *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633, [2003] 1 WLR 379.

65. Without prejudice to her contention that the legal costs were not payable at all, Ms Kol objected to the time spent and the amounts claimed in respect of legal costs.

The tribunal's determination

66. The tribunal determines that none of the 2013 legal costs claimed are recoverable by the former manager and, therefore, the sum of £2,868 should be refunded to lessees.

The tribunal's reasons

Section 24 of the Landlord and Tenant Act 1987

67. The starting point is to consider the powers granted to the tribunal to appoint a person as a manager. Section 24 of the Landlord and Tenant Act 1987, provides that the tribunal:

> "...may, on an application for an order under this section, by order (whether interlocutory or 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."

68. Section 24(4) 1987 Act provides that a management order made by the tribunal "may make provision with respect to (a) such matters relating to the exercise by the manager of his functions under the order, and (b) such incidental or ancillary matters, as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters..."

69. With regard to the manager's remuneration, section 24(5) adds that "Without prejudice to the generality of subsection (4), an order under this section may provide... (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons ..."

70. Thus, it will be seen that the statutory provisions give the tribunal very wide discretion to grant, or to restrict, powers to a manager; and to specify how, and in what circumstances and to what extent, the manager may be remunerated for his or her work.

The management order

71. The original management order of 4 August 2011 reflects these statutory provisions in several ways. First, paragraph 3 of the order sets out the manager's primary obligations :

> "3. The Manager shall manage the Property in accordance with:-
>
> a) The respective obligations of the landlord and tenants in the leases by which Flats A, B and C at the Property are demised by the landlord and in particular but without prejudice to the foregoing with regard to repair, decoration, provision of services and insurance of the Property. [...]
>
> b) The duties of Manager set out in the current Service Charge Residential Management Code (the "Code") or such other replacement Code published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993."

72. Secondly, paragraph 4 of the order sets out some specific duties of the manager:

> "4. Without prejudice to the generality of the foregoing it shall be the duty of the Manager:
>
> a) To collect and receive all sums whether by way of ground rent, service charge, insurance premiums or otherwise arising under the leases

b) To take any legal action that the manager shall see fit in order to recover any arrears of ground rent, service charge or any other sums arising under the terms of the leases [...]

i) To deal with all enquiries, requests, reports and correspondence with the lessees, the landlord and with solicitors, accountants and other professional persons in connection with the management of the Property."

73. Thirdly, so far as the issue of the manager's remuneration is concerned, paragraph 5 of the management order provides that:

"5. The Manager shall be entitled to the following remuneration (which for the avoidance of doubt will be recoverable under the service charge):

a) A basic fee of £1750 plus VAT per annum in respect of the Property for performing the duties set out in paragraph 2.5 of the Code.

b) In the case of works of a net cost greater than £1000 excluding VAT the Manager shall be remunerated at a reasonable fee up to a maximum of 10% of the contract sum.

c) A reasonable additional charge may be made for dealing with Solicitors Enquiries on transfer to be paid by the outgoing tenant.

d) Disbursements and postage and copy fees may be at additional charge."

The RICS Code

74. Reference in paragraphs 3(b) and 5(a) to "the Code" is to the second edition of the RICS Service Charge Residential Management Code, being the one in force at the time that the management order was made. Paragraph 2.5 of the Code sets out those tasks which would normally be covered within a managing agent's basic fee. These include: the collection of rents and service charges from leaseholders; the preparation and submission of rent statements, spending estimates and accounts; and the general maintenance and administration of the building, including insurance.

75. The list does not include giving court evidence on recovery of the unpaid rents or other charges, or on compliance with leasehold covenants and service charge arrangements, which is, however, one of the duties listed in paragraph 2.6 of the Code (i.e. outside the scope of basic fee in paragraph 2.5).

76. It is clear, therefore, that the original management order did not make provision for the remuneration of the manager for carrying out the duties listed in paragraph 2.6 of the Code, or for dealing generally with court or tribunal proceedings brought by lessees against the freeholder and/or the manager. That would have been known to an experienced tribunal-appointed manager, such as Mrs Bowring, and, indeed, it does appear to have occurred to her and/or to Ringley in March 2013, when Mrs Bowring applied for a variation of the management order on the grounds set out above.

The 2013 application to vary the management order

77. Notwithstanding the above, the application actually made by Mrs Bowring in March 2013 proposed a variation to the management order that would only entitle her to an indemnity from the service charge account in respect of any legal action which the manager was reasonably required to take to recover arrears. The tribunal dealt with the manager's application under ref. LON/00AJ/LVM/2013/0001 and the hearing took place on 15 May 2013. The manager's arguments were set out at paragraphs 49 and 50 of the tribunal's decision dated 26 July 2013, as follows:

> "49. The manager's case is that the order as drafted is lacking in detail since it does not specifically deal with the manager's ability to recover legal costs or other professional fees rising out of the appointment and that whilst a purposive construction of the terms of the order would nevertheless lead to the conclusion that the manager does indeed have the ability to recover such costs, for the avoidance of doubt it should nevertheless be spelt out.
>
> 50. In his oral arguments before the Tribunal Mr Tang [from Ringley] pointed out that such a clause was normally included in management orders of the type in question."

78. After that hearing, the tribunal invited further submissions from the parties, which resulted in Ringley filing and serving a new draft wording sought for the variation of the management order, in the following terms:

> "The following words are to be added to 4(b) of the Leasehold Valuation Tribunal Order dated 4 August 2011 (attached):
>
> "The Manager shall be indemnified by the service charge from all legal costs reasonably incurred in the carrying out of the duties outlined in this Order and arising from any proceedings in relation to the Property." "

79. This new wording was considerably wider than the variation originally sought (not being limited to action taken by the manager) and, if granted by the tribunal, would amount to a general indemnity through the service charge for any costs incurred by the manager. Perhaps not

surprisingly, the lessees objected very strongly to it. They complained that the manager was using the threat of costs to put them under unreasonable pressure, to oppress and silence them, despite their very real concerns about how she was managing the building, at a time when their accounts were in credit.

80. In its written decision of the 26 July 2013, the tribunal rejected the new wording and approved the wording that Mrs Bowring had originally put forward in her application to vary (see paragraph 88 of the decision).

Options then open to the manager

81. As the management order, even amended, did not contain the general indemnity for costs sought by the manager, there were several options available to Mrs Bowring at that stage:

    (i) She could have appealed the decision not to give her a general indemnity for her costs through the service charge;

    (ii) She could have applied for the discharge of the management order, on the basis that she was unlikely to be able to recover the costs of disputes about her management of the building (an option which the lessees themselves had identified at the conclusion of their submissions dated 11 April 2013); or

    (iii) She could have continued managing the property, notwithstanding the lack of any indemnity as to costs; in particular, she could have ensured that she provided a first class service to lessees, so that there would be no future disputes and therefore no irrecoverable costs.

82. In the absence of an appeal or application to be discharged, the former manager chose to continue managing the premises without a general indemnity for her costs. No doubt she would say that she provided a good service, with full transparency, in accordance with the terms of the order; but, as is clear from the documents, so far as the lessees' were concerned, she provided a terrible service, of little value, which was "in collusion with the landlord".

83. The problem now faced by the manager is that she now seeks to claim costs (here, specifically, the legal costs incurred in the 2013 tribunal proceedings) that are outside the remuneration provisions of the amended management order.

84. As it is not possible to vary the management order after it has expired (see *Eaglesham Properties Limited v John Jeffrey* [2012] UKUT 157 (LC), LRX/28/2011), the next question is therefore whether the provisions of the lease and/or the Court of Appeal decision in *Maunder Taylor v Blaquiere* can come to the aid of the former manager, to enable her to recover her additional costs from the lessees.

The lease provisions

85. It will be recalled that by paragraph 3 of the management order "The manager shall manage the property in the accordance with: (a) The respective obligations of the landlord and tenants in the leases ... [and] (b) the duties of the manager set out in ... the Code ..." .

86. Clause 3 of the lease contains the lessor's covenants with the lessee (for which the lessee is to pay a service charge) including, at 3(5)(e) and (f) the following:

> "3(5) Subject to contribution and payment as hereinbefore provided the Lessor will at all times during the said term: ....
>
> (e) If the Lessor employs Agents to manage the Building to discharge all proper fees charges and expenses payable to such Agents in connection therewith including the cost of computing and collecting the maintenance charge
>
> (f) Without prejudice to the foregoing do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessor may be necessary or advisable for the proper maintenance safety and administration of the Building".

87. The usefulness to the manager of clause 3(5)(e) is limited, because it is conditional upon the lessor employing agents; whereas, in the present case it is the tribunal, which had appointed a manager. However, clause 3(5)(f) is much more widely-drawn and gives the lessor more or less free rein to do all matters "necessary or advisable" for the administration of the building; and one of the manager's duties is to manage the property in accordance with the obligations of the landlord in the lease.

88. However, can the manager rely on this clause to claim a service charge from the lessees? The status of the former manager is clearly set out in the Court of Appeal decision in *Maunder Taylor v Blaquiere*, upon which Mrs Bowring relied. The lead judgment was given by Aldous LJ, who, at paragraph 41, held that:

> "In my view the purpose of Part II of the 1987 Act is to provide a scheme for the appointment of a manager who will carry out the functions required by the court. That manager carries out those functions in his own right as a court-appointed official. He is not appointed as the manager of the landlord or even of the landlord's obligations under the lease. That being so, Mr Maunder Taylor was a court-appointed manager appointed to carry out those duties required by the order appointing him. He did not carry on the business of Guernsey [the landlord]. His claims were made in his capacity as manager." [*Emphasis added*]

89. In that case, the manager's functions and duties included authorisation "to carry out the obligations of the respondent [the landlord] contained in clause 3 of the tenants' leases ..." (see paragraph 5). Aldous LJ dealt with that in paragraph 42 of the judgment:

> "The manager acts in a capacity independent of the landlord. In this case the duties and liabilities laid down in the order are defined by reference to the lease, but do not alter his capacity. In my view Mr Maunder Taylor's right to the money claimed arose from his appointment not from the lease. It follows that there was no mutuality between his claim and that of Mr Blaquiere. That being so, set off is not possible." [*Emphasis added*]

90. Applying the Court of Appeal decision to this case, it is therefore clear that Mrs Bowring acts in her own right as a "court-appointed [i.e. tribunal-appointed] official" and is not there to carry out the lessor's obligations under the leases, even if her duties and functions in the management order are made by the reference to the lease obligations.

91. Although it was her position that recovery of costs can be argued to be arising from clause 3(5)(f) of the lease, absent a (retrospective) variation to the management order, such an argument is not sustainable in the light of *Maunder Taylor v Blaquiere*. Mrs Bowring's right to her costs arose from her appointment, not from the lease. Although it may be said, as Mrs Bowring argued, that part of the rationale for the *Maunder Taylor* decision was to prevent a court-appointed manager from being left in debt due to a lack of proprietary or permanent interest in their managed property, that was in the context of a leaseholder's claim for set-off in respect of his landlord's breach against the manager's claim for a contribution to service charges, rather than in relation to a manager's claim for his costs.

Conclusion

92. Accordingly, insofar as Mrs Bowring has sought to claim her legal costs of dealing with tribunal proceedings through the service charge, none of these can be allowed. Her right to remuneration arose from the terms of the order appointing her. That order did not include a general indemnity for her costs (howsoever incurred) and when Mrs Bowring applied for such an indemnity, the 2013 tribunal expressly declined to give her one (presumably because of the concerns about management raised by the lessees). Therefore, the lessees' money that has been utilised to pay for such legal costs should be returned to them.

Alternative outcome

93. If it were to be found that the tribunal was wrong on its interpretation of the legal position with regard to the recovery of the manager's costs under the management order and/or under the provisions of the lease,

then the tribunal makes the following determination as to the amount of costs that it would have considered were reasonable and payable by the lessees.

Amount of costs claimed

94. The total legal costs claimed in 2013 came to £2,868.

95. The tribunal turns first to the time spent and the charging rate applied. These appear to be unexceptional for the work carried out and are not reduced; and it matters not that the work was carried out by an associated, in-house entity, Ringley Legal.

96. The tribunal then looks at the breakdown of the invoices as between the two cases, LSC/2012/0803 (the lessees' challenge to the manager's service charge demands) and LVM/2013/0001 (the manager's application to vary the management order). No breakdown between the two cases is given and, indeed, they were eventually heard together. In the absence of evidence, the tribunal assumes that such costs are to be divided equally between the two cases.

97. Since, in LVM/2013/0001, the manager was successful in obtaining the variation to the management order that she had first sought, in the face of the leaseholders' opposition, at first blush, 50% of the total costs would appear to be allowable. However, as was pointed out at the recent hearing, the application for variation was made at a time when none of the residential leaseholders were in arrears; and nor was there any imminent threat that they would fall into arrears within the foreseeable future.

98. In fact, the application for variation was apparently made on the basis that the lessee of the commercial premises was in arrears; and the manager needed the order to be varied in order to cover court proceedings that might be necessary against him. Although the residential lessees were not the intended target of the application, at least at this stage, the management of the building as a whole required the manager to recover arrears from any lessee, including the lessee of the commercial premises. Therefore, it was reasonable for the manager to seek a variation of the management order for this purpose and the 2013 tribunal agreed.

99. Therefore, the 50% of the legal costs levied in respect LVM/2013/0001 would have been considered reasonable and payable by all the lessees; and would have been allowed in full.

100. As to the other 50% of the costs claimed, these were spent by the manager dealing with the lessees' application (LSC/2012/0803). As to the issues in dispute before the 2013 tribunal:

(i) The lessees initially lost their arguments relating to POL, commercial weighting and commission paid for the building insurance, but the Upper Tribunal overturned these decisions on an appeal. On a re-hearing before this tribunal, the lessees won on the POL issue, but not on the commercial weighting point (the insurance commission having been disallowed definitively by the Upper Tribunal);

(ii) The lessees' challenges to the £100 and £520 charges for the preparation of service charge accounts, resulted in £100 and £100 being allowed; and the Upper Tribunal refused the applicants permission to appeal against this determination (though we have reconsidered and confirmed the latter figure, as the amount allowed in 2013 was a budgeted rather than a final amount);

(iii) The contract administration fee of £900 was allowed at £300 by the 2013 tribunal; but that was overturned on appeal by the Upper Tribunal, which found that the £300 was not payable;

(iv) The fire safety and asbestos reports were allowed in the sums of £446.46 and £350, respectively; and this determination was not appealed; and

(v) The management fee was allowed in full by the 2013 tribunal, a decision overturned by the Upper Tribunal and then remitted to this tribunal for re-hearing (see below).

101. It follows from the above analysis the lessees were clearly justified in bringing their challenge to the service charges in LSC/2012/0803. The manager should have engaged more with them. However, even had she reached agreement on some of the disputes, say, on those where the lessees were ultimately successful, it seems clear that the lessees would still have taken the matter to a hearing on the others.

102. Since the lessees ultimately won on approximately half of the issues by value, the tribunal would have allowed the manager to recover one-half of those costs, i.e. one-half of the costs applicable to LSC/2012/0803.

103. Altogether, the tribunal would have found that three-quarters of the costs were reasonable and payable by the lessees, i.e. £2,151 (£2,868 x 75%), of which the residential lessees' share would have been £1,434 (two-thirds).

7. Management fees

104. The lessees also disputed the £3,675 management fees charged by Mrs Bowring for the two years of her appointment.

105. As mentioned above, the original management order stated that the manager shall be entitled to a basic fee of £1,750 plus VAT per annum for performing the duties set out in paragraph 2.5 of the RICS Code.

106. In paragraph 23 of his judgment of 17 August 2015, HHJ Huskinson accepted that it would not be open to the leaseholders to argue that the sum of £1,750 plus VAT was an unreasonably high management fee (supposing that the management was properly carried out), because the order appointing a manager had laid down what was the appropriate remuneration for her services. However,

> "if the allegation is that those services had not been provided (or had not been properly provided) then in my view the [lessees] were entitled to raise before the Ft-T the question of whether an amount less than £1,750 + VAT should be paid for such management as was in fact provided."

107. In paragraphs 51 and 52 of his decision, HHJ Huskinson stated:

> "I consider that where tenants make serious criticisms to the F-tT about the conduct of a manager appointed by the F-tT then the tenants can expect the F-tT to examine these allegations with care. The manager is an officer of the Ft-T. The criticisms are being made against the manager as an officer of the Ft-T... While the amount of money at stake is small, a serious issue has been raised by way of complaints against a tribunal appointed manager and receiver. These complaints require proper consideration and a reasoned decision. It is necessary that the matter is remitted for consideration, upon evidence, at a further hearing before the F-tT."

108. According to the original management order, the management fee for the building as a whole was to be £1,750 plus VAT = £2,100 per annum, shared as to one-third for the shop and two-thirds for the three residential flats above. The quarterly charge for the building was therefore £525.

109. Mrs Bowring did not charge a management fee for the first quarter after her appointment in August 2011, the first charges being levied on 1 January 2012. The seven quarterly management fees that were levied came to a total of £3,675, which was the amount for management fees appearing in the income and expenditure report for the period from 4 August 2011 to 4 August 2013. This was divided between the various units as follows: Flat 1: £816; Flats 2 and 3: £817 each; and the shop: £1,225.

The applicant lessees' complaints

110. The lessees challenged all of the £3,675 claimed by the manager. The complaints were set out in the schedule, but were summarised by Ms Kol at the hearing as follows:

(i) Mrs Bowring did not understand her role. Lessees paid a premium management fee in the expectation of receiving a higher standard of care; but all they received was inadequate "desk top" management. Nothing was done and Ringley's performance did not justify their fees;

(ii) From the outset, the lessees had told Mrs Bowring not to intervene in their recovery of service charges to be refunded by the freeholder as a result of the 2011 tribunal decision; but rather she should just start with a nil balance and concentrate on managing the building. However, Mrs Bowring had "gone off on a frolic of her own" and had intervened between the leaseholders and the freeholder, receiving the refund monies from freeholder and utilising at least some of them towards her own service charge demands, when she had no mandate to do so;

(iii) Lessees had provided Ringley with their own surveyor's report on the condition of the premises, and quotations to obtain fire risk and asbestos reports, but none of these were taken up, causing delays in implementing necessary works. Even then, it took years for lessees to obtain copies of the reports that Mrs Bowring had obtained, in the same way that it had taken years to obtain final accounts covering the period of Mrs Bowring's appointment. All of these things should have happened as a matter of course and it was quite extraordinary that lessees had been forced to come to the tribunal to obtain these documents;

(iv) Instead of managing the premises properly, Mrs Bowring put her efforts into trying to force the lessees to withdraw their tribunal challenges, with threats of costs. Mrs Bowring's whole emphasis was not to get things done, but to maximise her profit arising from the appointment;

(v) Mrs Bowring did not actually do anything for the building during the period of her appointment. The only practical matter was overseeing tree work in August 2011, which had already been arranged prior to her appointment.

The manager's response

111. For her part, Mrs Bowring said that there had been no misunderstanding as to her role. As tribunal-appointed manager, her task was to manage the building in such a way as to comply with statutory duties in relation to fire and asbestos hazards, and to prepare a management plan, with a view to preparing for and executing necessary internal and external works and decorations, to bring what was a neglected building up to standard. She denied that a "premium"

fee had been charged: the fee of £1,750 plus VAT for the building was exactly the same as the standard fee that Ringley might charge any private freeholder, who might approach them to manage a building such as this.

112. Mrs Bowring had seen the survey report obtained by lessees and this did not include a specification of works. It was therefore legitimate to arrange for another surveyor to inspect the building and prepare another report, with a view to eventually carrying out works. The tree works may have been arranged in advance of her appointment, but she, the appointed manager, had to implement those works; and, in any event, the cost of them was charged to the shop, not to residential lessees.

113. It was quite wrong to say that Mrs Bowring had done nothing apart from shuffling papers: she had visited the premises, as had two surveyors from Ringley; as a manager she had a duty to comply with fire and asbestos regulations and she did so; it took time to prepare section 20 notices for the proposed internal and external works, to serve these, to receive and consider lessees' comments, to prepare a specification of works and to receive tenders, which then had to be analysed. This all took time, and it was done by her; and had the two-year tribunal appointment not expired, she would have executed the major works as well.

114. The real problem, Mrs Bowring maintained, had been created by the lessees themselves, who were unwilling and had failed to pay their service charges following her appointment. Without money, she had been severely been hampered in what she could do for the property. With hindsight, she probably should not have become involved with the refund of monies from the freeholder, given the problems it had created, but at the time she saw it both as a way of assisting the lessees to recover monies, and as a way to fund the ongoing management costs.

115. Not only was the management hampered by the lack of funds from lessees, but she, as manager, had been inundated, first, by lessees' queries, in particular from Ms Kol, and then by the lessees' tribunal application in November 2012, all of which used up her time that would otherwise have been spent on managing the building. By her estimation, she had spent in excess of 100 hours in relation to this building, thereby rendering the management completely unprofitable, in the light of the management fee charged and bearing in mind the deductions imposed by HHJ Huskinson in the Upper Tribunal's decision of 17 August 2015.

Discussion

116. The tribunal has spent a considerable time reviewing the paper work produced by the parties; in particular to exhibits 14-17 of the lessees'

2013 hearing bundle, the statements of accounts produced by Ms Kol at the hearing, the income and expenditure accounts for the period 4 August 2011 to 4 August 2013 produced by Mrs Bowring, with supporting invoices, the Respondent's Statement of Case prepared by Ringley and filed with the tribunal in October 2015, including the management plan, numerous documents relating to the inception of insurance at the premises, e-mails received from Ms Kol in April 2016, with annotated documents attached, the hearing bundle and the completed schedule of disputes, and the former manager's responses received from Ringley in August 2016, amongst many others.

Level of the management fee

117. From these, it is clear that the management fee charged by Mrs Bowring and specified in the management order is not a "premium" management fee, but a standard one that Ringley charges to manage a building of this nature. The overall annual charge per residential leaseholder is equivalent to £466.67 per annum, inclusive of VAT. Such an annual fee is within the range of normal management fees seen by this tribunal on a daily basis though, admittedly, at the higher end of the range. In the event, the management fees charged to lessees were slightly less in the first year of the appointment, equating to £350 per flat, inclusive of VAT.

118. The reduced figure in the first year is reflective, no doubt, of the fact that Ringley undertook no active management in the first quarter after their appointment. This appears to be confirmed by exhibit 13 of the lessees' 2013 hearing bundle, which are the minutes of a conference call meeting on 25 November 2011 between Deborah Kol and Caroline Ebborn (two of the residential lessees), on the one part, and Jason Karim (of Ringley), on the other. At paragraph 4.3 the minutes record that "It was clear that until the opening balance credits issue had been resolved, that services would not be formally entered into to [sic] the property".

Confusion of roles

119. Notwithstanding the assertions of Mrs Bowring to the contrary at the hearing, the contemporaneous documents support the lessees' contention, and the tribunal finds, that Mrs Bowring and/or members of her firm had misunderstood her role as tribunal-appointed manager. So, for example, at paragraph 3.2 of exhibit 13 it is recorded that:

> "While it was evident that Ringley act as court appointed Manager, on behalf of the FH [i.e. the freeholder] Ringley's working practices were designed to be transparent to the owners". [*Emphasis added*]

120. This was compounded by exhibit 14, which contained the minutes of another conference call, this time between the freeholder's representative, Mr Stephen Ovanessoff, and Jason Karim of Ringley, held on 20 January 2012. In the section dealing with the residents' association's status at the building, at paragraph 3.2, it is recorded that:

> "JK proposed that the role of Ringley here was to ensure a working dialogue between the owners and the Trust. Decisions would have to be ultimately due from the Trust (with Ringley as the Agent appointed by the Court to act for the Trust) but consultation with owners would take place to take due account of their views and preferences. No-one wished to return to the LVT and the critical goal was to ensure that the building was properly [managed]." [*Emphasis & missing word added*]

121. The apparent confusion as to Ringley's role was also reflected in later documentation prepared by Ringley in advance of the proposed major works to the building. Amongst the papers supplied by Ringley to the tribunal by letter dated 16 September 2014 was a letter sent by Ringley on 19 June 2012 to Mr S Ovanessoff of the freeholder Trust. That letter enclosed Ringley's terms of engagement in respect of the proposed major works and enclosed an agreement between the Trust and Ringley for those works, where the client was the Trust.

122. Standing back, the overall impression is of a close relationship between Ringley and the freeholder. The genesis of that relationship may come from the fact that the freeholder had proposed Ringley as an alternative manager to the tribunal back in 2011; and it was the freeholder's nominee, not the less-experienced leaseholders' nominee, who was appointed by the tribunal on 4 August 2011 to manage the premises.

123. The confusion of roles is extremely unhelpful and apt to undermine the lessees' confidence in the independence of the tribunal-appointed manager. It may also go some way to explain why Mrs Bowring became so involved in the recovery of service charge refunds from the freeholder and why, at the hearing, she somewhat pleaded the case of the (now former) freeholder, which she said "had already lost enough money" as a result of previous tribunal determinations.

Recovery of refunds from the former freeholder

124. With regard to the service charge refunds from the former freeholder, it is apparent from the exhibits that the applicant leaseholders expressed a clear preference for a cash refund from the Trust; and they rejected the proposal by Ringley (for example, by Jason Karim on 25 November 2011 in exhibit 13) that the refund monies be credits against the service charge accounts and that the Trust met costs arising in the year until the credits were cleared (see paragraph 4.2: "This was rejected with the preference of a cash refund from the Trust").

125. The lessees repeatedly expressed their view that they preferred to receive their refunds in full first, even though it was apparently clear that, in order to carry out internal decorations, some, if not all of the money that the freeholder was to refund to leaseholders would need to be returned by them to the service charge account in due course.

126. The lessees' exhibit 15 is a document dated 27 January 2012, which was their response to Ringley's note of the minutes of the conference call between Stephen Ovanessoff and Jason Karim, on 20 January 2012. This document is the clearest statement of the lessees' desire to claim their monies directly from the freeholder and for the monies not to be treated as a credit to the service charge account:

> "4.5 The Leasehold Advisory Service has advised the leaseholders that reimbursed service charges under the LVT decision can be enforced by a County Court Order. The County Court will recognise the LVT decision as a claim for recovery of moneys owed (ie: debt claim) to the leaseholders. This is NOT the same as a credit to service charge account. Leaseholders do not wish to mix the debt owed by the Freeholder to the individual leaseholders with monies held in the service charge account. Nature of the monies held in the service charge account is of a different nature (ie: these are collective trust assets). Ringley kindly asked to revisit this point." [*Emphasis added*]

127. In the event, the refunds from the freeholders were not handled in the way that the leaseholders wished. Ringley issued their first service charge demands on 1 January 2012, putting each of the residential lessees into a notional, paper arrears position of £545.58. Payments were not forthcoming from lessees at this stage. As Mrs Bowring explained at the hearing, in the absence of any funds from lessees, it was not possible for her to carry out any management of the building. There were discussions between Ringley and the freeholder concerning the refunds due to leaseholders. For cash-flow reasons, the Trust proposed paying the refunds in two instalments: the first in February 2012 and the second in May 2012.

128. Mr Ovanessoff, for the first respondent, attended the tribunal hearing and he confirmed that he had paid the refund in two instalments by cheque to Mr Karim at Ringley. The first instalment was paid on 2 February 2012 in the sum of £3,192.00 and the second instalment in May 2012 in the sum of £3,291.32: together making a total £6,483.32.

129. Mrs Bowring confirmed that the money was received by Ringley; but it was not included in the service charge accounts prepared for the period 4 August 2011 to the 4 August 2013. However, notwithstanding this, in the statements of account produced to the tribunal by Ms Kol, it is clear that credits *were* applied to the accounts of each of the residential flats on either 3 February or 2 March 2012; and they are described as

"Opening Balance - LVT loss Ins". The sums credited were: £2,301.87 for flat 1, £1,409.56 for flat 2 and £2,771.89 for flat 3; making a total £6,483.32.

Later treatment of freeholder refunds

130. This was not at all how the lessees had wanted the refunds to be dealt with and they complained to the former freeholder and to Ringley. Mrs Bowring responded by e-mail dated 19 March 2012 (exhibit 20 of the leaseholders' 2013 bundle), in the following way:

> "In respect of the LVT credits as these are service charge it is right for them to be off-set against the service charge which is what I have applied. That is my decision. The effect is the same."

131. In each case, the now credit balances on the lessees' accounts reduced steadily by subsequent service charge demands raised by Mrs Bowring, until June and July 2012, when the (much-reduced) credit balances of each account were refunded to the lessees, resulting in nil balances in each case (though, in the case of flat 3, only after the application of the further service charge demands on 1 July 2012). The sums refunded to lessees on this occasion were: £665.13 for flat 1, £318.40 for flat 2 and £1,135.15 for flat 3; making refunds in the total sum of £2,118.68.

132. One of the lessees' complaints was that the amounts that were eventually refunded to them represented an unhelpful and confusing mix of money, i.e. of money refunded by the freeholder and money that leaseholders had paid towards the service charges. They refuted Mrs Bowring's explanation at the hearing that the lessees had been unwilling to pay their service charges until they had received the refunds from the freeholder, and that was why Mrs Bowring had had to get involved in negotiating and receiving the refunds. The lessees said that, contrary to the statement that they had not paid their service charges, they had made payments, demonstrating their good faith, before the credits were received.

133. However, an examination of a statement of accounts, which Ms Kol handed in to the tribunal at the hearing, showed that none of the lessees had in fact paid service charges to the manager, until after they had received refunds of the credit balances of their service charge accounts; and that, therefore, the refunds they did eventually receive in June and July 2012 were comprised purely of money refunded by the freeholder, albeit a lot less than the full amounts the lessees had hoped to receive.

134. Be that as it may, it is clear that the lessees' strongly-expressed desire to receive a full refund of the pre-2011 service charges was effectively ignored by the tribunal-appointed manager. While the tribunal agrees with Mrs Bowring that "the effect is the same" - in that lessees would

still have had to pay the manager's service charge demands, in what would have been a somewhat circular fashion - the impression given to lessees by ignoring their request was of an overly-close relationship between the tribunal-appointed manager and the freeholder.

135. Although Mrs Bowring told the hearing that the lessees "were never happy" and they questioned everything to such a degree that it amounted to "interference" with her role as tribunal-appointed manager, it was this failure to leave the lessees to negotiate with their freeholder directly with regard to the tribunal-awarded refunds, which most undermined their relationship.

136. The question, then, is whether these matters, in particular the confusion of roles and the handling of the service charge refunds, affect the reasonableness of the management fee.

The tribunal's conclusions and determination

137. As stated previously, the management fee charged (and approved by the tribunal in the original management order) was within the range of standard management fees for properties of this kind, although at the higher end. The work that was carried out by Ringley was set out in the management plan contained within the Respondent's Statement of Case, received in October 2015. This included: "Detailed analysis of lease, budget, company structure and set up [which] began on about 17 August 2011." This was followed by numerous "acts of management" following the management plan (which had been presented to and accepted by the first tribunal in 2011).

138. Although there was no meeting with lessees (which was unfortunate, as it could have cemented relationships), there were a number of inspections of the property, reports were commissioned to assess fire risk and asbestos in the building, a survey report was obtained, which led to the preparation of a specification of works, the service of a section 20 consultation notice and the obtaining of quotations. All this, and other, work was done by the manager with a view to carrying out internal and external decorations; ensuring that the property was properly insured (by the freeholder in 2012, but by the manager in 2013; and, despite leaseholders' complaints about the premiums, by the manager securing a substantial reduction in the insurance costs, compared with previous years); demanding and collecting service charges; transferring funds to a trust account; dealing with leaseholders' queries and providing management information to them; and the authorisation and payment of invoices, albeit of many of them were for services provided by other, related Ringley companies.

139. All of the above may be characterised as normal incidents of property management; and, in the tribunal's view, where there is no need for pressing urgent works to be carried out, the first year of a manager's

appointment is very likely to be taken up with establishing the management arrangements, finding out what needs to be done at the property and setting in motion any necessary inspections and reports. In the present case, there were no available funds to cover the costs of such work for the first six to seven months of the appointment and this has been reflected in the lower management fee charged for the first year. In the second year, additional work was carried out by the manager, who continued to deal with lessees' queries, to arrange fresh insurance, and to organise inspections and reports.

140. There is some merit in Mrs Bowring's lament that her work as manager was cut short prematurely by the expiry of the management order after two years, so that she could not fulfil the repairing obligations that she had started. While there was some force in this, the tribunal noted that Mrs Bowring had been in funds from the beginning of March 2012, but it had still taken nearly ten months to reach the stage where she was in a position to issue the notice of intention to carry out works to do the internal and external decorations; and more than ten months to arrange for fire risk assessments and asbestos reports. Even having started the section 20 consultation procedures on 23 December 2012, it was not until 12 September 2013 (after the expiry of the appointment), that Ringley were in position to progress the works, subject to the receipt of funds.

141. Looking at the two-year period as a whole, the overall picture is of management that was slow to start, due in part to a lack of funds, but then slow to progress once funds were in place. The manager meddled in the matter of the refunds that the lessees sought from the previous freeholder and, in doing so, confused her role as a tribunal-appointed manager, with the role of acting as agent for the freeholder. This caused unnecessary conflict with lessees and led to loss of trust and a complete breakdown in their relationship. In the tribunal's view, it also detracted from the manager's work managing the building, resulting in the sluggish progress observed.

142. The tribunal would have expected more progress to have been made within the two years available, and to this extent, the management fees are too high for the work carried out and given what little was achieved. To reflect this, the tribunal concludes that the reasonable management fees should be less than the amount specified in the management order.

143. Taking into account the above matters, the tribunal determines that a reasonable management fee for the work carried out by the manager is £325, including VAT, per flat per annum; and £487.50, including VAT, for the commercial premises. Whereas the full management fee would have been £2,100 per annum (i.e. £1,750 plus VAT), the reduced management fee should be £1,462.50 per annum (i.e. £325 x3, plus £487.50).

144. In the tribunal's judgment, £2,925, including VAT, (£1,462.50 x2) is therefore reasonable and payable by all the lessees for the whole two-year period. In the accounts, some £3,675 has been charged for management fees during this period, so the excess of £750 (£3,675-£2,925) should be returned to lessees. Of this sum, the residential lessees' share is two-thirds, or £500.

Events after the expiry of the management order

145. After the expiry of the management order on 4 August 2013, and by letter dated 12 September 2013, Ringley served a section 20 statement of estimates on lessees (although nothing further happened); and on 23 October 2013, Ringley submitted an insurance claim for the rain water leak in flat 2 (which was apparently not pursued by flat 2). Thereafter, Ringley applied to the tribunal on 19 March 2014, for payment of outstanding invoices relating to its costs of management (ref. LON/00AG/LVM/2014/0012). That application which was dealt with by the tribunal in a decision dated 30 September 2014, from which it will be seen that Ringley withdrew all of its invoices at the hearing.

146. In the midst of this post-appointment activity, the lessees struggled to obtain documents from Ringley, in order to give them to the new managing agents, Salter Rex. The delays and problems which the lessees experienced were then compounded in mid-2014, when Mrs Bowring suffered a devastating personal tragedy, which understandably affected her ability to deal with these matters.

147. In those circumstances, the tribunal is unwilling to take into account matters which occurred after Mrs Bowring's appointment expired, when considering the reasonableness of the management fee during the period of appointment.

Applications for costs and for a section 20C order

148. At the end of the hearing, Ms Kol indicated that the lessees wished to make a claim for costs against Mrs Bowring under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Mrs Bowring indicated that she wished to raise administration charges against the lessees in respect of her time spent responding to what she described a "frivolous case" brought by lessees. She prayed in aid of such a claim the fact that these costs had been incurred as a result of her appointment by the tribunal as manager, in accordance with the Court of Appeal decision in *Maunder Taylor v Blaquiere*, referred to above.

149. In addition, insofar as was necessary, Ms Kol applied for an order under 20C of the Landlord and Tenant Act 1985, which Mrs Bowring opposed.

150. In order to deal with these matters, which came at the end of a very long hearing day, the tribunal invited further written submissions within two weeks and gave directions that the parties should exchange and file their submissions on costs by 9 September 2016; with each party exchanging and filing replies by 23 September (later extended to 19 October 2016). Any such submissions would then be taken into account and decisions made in relation to costs, as part of the tribunal's final determination.

151. The tribunal has now considered those submissions and has made the following further determinations.

Costs applications

152. When the parties indicated that each intended to seek an order for costs against the other, the tribunal understood that to mean in respect of the proceedings, after the matters had been remitted by the Upper Tribunal in 2015; and it was on this basis the tribunal drew the parties' attention to the decision in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC), LRX/90/2015, and to its guidance on costs awards under rule 13 of the Tribunal Procedure Rules. However, it is apparent from the papers that the lessees sought costs for *all* of the proceedings LSC/2012/0803 and LVM/2013/0001, from the start of the applications on 26 November 2012 and 15 March 2013, respectively, up to and including the re-hearing on the 19 August 2016 and the subsequent submissions in September and October 2016.

The amounts claimed

153. The lessees' claim came to some £3,923 and comprised an application fee of £250, a hearing fee of £190, costs of £3,204 and out of pocket expenses of £279. Their claim was against Mrs Bowring for unreasonable conduct, under rules 13(1)(b) and 13(2), and against Ringley Legal for wasted costs, under rule 13(1)(a).

154. For her part, Mrs Bowring claimed £1,600 plus VAT in respect of costs against the leaseholders, based on what she submitted was her entitlement to recovery pursuant to the lease, the management order, the decision in *Maunder Taylor v Blaquiere* and rule 13. Although it was not entirely clear from her costs submissions, it also appeared that she sought to challenge decisions made by the Upper Tribunal resulting in the loss of £300 fees for the section 20 consultation, £184.90 for the loss of insurance commission and some £3,643 as a result of the costs order of the Upper Tribunal dated 12 January 2016. However, this tribunal has no jurisdiction over those sums, all of which were determined by the Upper Tribunal.

Applicability of rule 13 to the proceedings

155. Having received the parties' submissions, the tribunal now realises that rule 13 has no applicability to proceedings LSC/2012/0803 or LVM/2013/0001. This is because both proceedings were started before the Tribunal Procedure Rules 2013 came into force, on 1 July 2013; and, by paragraph 3(7) of Schedule 3 to the Transfer of Tribunal Functions Order 2013 (SI 2013 No. 1036), in proceedings which are pending immediately before 1 July 2013 "An order for costs may only be made if, and to the extent that, an order could have been made before 1 July 2013".

156. Prior to this date, the tribunal's ability to award costs was limited by paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, which is set out as follows:

> "**Costs**
>
> 10(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
>
> (2) The circumstances are where—
>
> (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
>
> (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
>
> (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
>
> (a) £500, or
>
> (b) such other amount as may be specified in procedure regulations.
>
> (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph."

157. As will be seen, an award of costs is limited to £500 and the circumstances in which costs may be awarded are phrased differently to those in rule 13. However, notwithstanding this, we have taken into account all the submissions received with regard to the *Willow Court* decision, together with all of the allegations made against Mrs Bowring

and/or Ringley, as they are still relevant to the former test under paragraph 10(2)(b) and, in any event, pre-1 July 2013, the test for unreasonable conduct was that in *Ridehalgh v Horsefield* [1994] Ch 205, which is relied upon and approved of in the *Willow Court* decision.

158. The only detriment to the parties is the £500 limit on any costs that may be awarded, but that is a matter of law over which the tribunal has no control.

Discussion

159. The lessees' allegations against Mrs Bowring and/or Ringley include "misfeasance", being "in collusion with the landlord" and for making "spurious accounting entries", amongst others. The lessees gave significant amounts of detail, with supporting exhibits, in support of their allegations and their claim for an order of costs. The position was summarised by the lessees in their concluding remarks, as follows:

> "An outside observer would be forgiven in thinking that what is at stake in this case are some low level sums of disputed "service charge" items. But what we have uncovered over the past decade in dealing with residential property managing agents and insurance brokers is that there is a racket going on out there."

160. It is for others to say whether there is "a racket" involving the management of leasehold property; and we have no view. The question for us is whether it can be said that Mrs Bowring has "acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings."

161. Without doubt, this was a fiercely-fought dispute with some very serious allegations being made about the competency of Mrs Bowring and/or Ringley in relation to the management of the building. It is correct that, once the matter had been remitted by the Upper Tribunal, there was somewhat slow compliance by the former manager with tribunal's directions, resulting in a warning having to be given. However, eventually, there was compliance and Mrs Bowring did provide final accounts and sufficient documentation to enable a very full hearing of the outstanding issues to take place; with, it must be said, Mrs Bowring being present throughout, to defend her position and to answer questions. She did so, even in the face of sustained personal criticism from lessees and against the background of her very great personal tragedy in mid-2014, mentioned above.

Conclusions and determination

162. There is a very high bar to clear before an award of costs under paragraph 10 of Schedule 12 is made (as there is under the new rule 13,

which replaced it). Having taken into account the history of this matter and the parties' submissions, we conclude that Mrs Bowring's conduct fell far short of the conduct specified in paragraph 10(2)(b). It follows that we make no order for costs against her; and we can say with confidence that we would have reached the same decision under rule 13.

163. With regard to the claim by Mrs Bowring against the lessees, insofar as it was made under rule 13, all of the same comments apply and we find no unreasonable conduct on the part of the lessees, either. For this reason, the tribunal declines to make an award of costs against the lessees, under paragraph 10 of Schedule 12 to the 2002 Act; and neither would we have made an order under rule 13.

164. Insofar as Mrs Bowring's claim for costs is made on the basis of the provisions of the lease, the management order and the decision in *Maunder Taylor v Blaquiere*, the tribunal declines to allow such costs to be put through the service charge, for the same reasons as it declined to allow legal costs in relation to the 2013 tribunal hearing to be passed to lessees through the service charge.

165. However, if the tribunal were to be found wrong in its interpretation of the law, it would have allowed the £1,600 plus VAT claimed, in full, as the charging rates and time spent are reasonable for the work carried out.

Refund of fees

166. With regard to the lessees' claim for a refund of the application and hearing fees that they had paid, this is also declined, for the following reasons.

167. The 2013 tribunal dealt with this issue in paragraph 90 of its decision of 26 July 2013; deciding on that occasion not to order the manager to refund any fees paid by the lessees (nor vice versa).

168. The issue of whether fees should or should not be refunded was not one of the issues upon which lessees were granted permission to appeal, which were set out in paragraph 5 of HHJ Huskinson's decision of 17 August 2015; nor was it one of the matters remitted to this tribunal under paragraph 54(3). If the matter needed clarification, then this was provided by HHJ Huskinson in his Supplemental Decision on Costs, dated 16 November 2015, where at paragraph 62 he stated:

> "As regards the costs in relation to the proceedings before the F-tT, there was a decision by F-tT that: "Neither party shall reimburse the other party with the application and hearing costs", see decision (9) in the introductory part of the F-tT's decision. The appellants were not granted permission to

challenge the decision. I cannot interfere with this decision and, separately, I would not in any event have thought it right on the merits to do so."

169. For these reasons, the tribunal is unable to revisit the decision regarding fees made by 2013 tribunal.

Application for an order under section 20C

170. By section 20C of the Landlord and Tenant Act 1985:

> "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 ... tribunal ... 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 person or persons specified in the application."

171. The tribunal to which the application is made "may make such order on the application as it considers just and equitable in the circumstances": section 20C(3).

172. So far as the former freeholder is concerned, in our judgment, clause 3(5)(f) is sufficiently widely drawn to allow a landlord to recover its costs through the service charge, where they are related to the "administration of the building". However, for the reasons given above in relation to the 2013 legal costs, we do not consider that the former manager may avail herself of this provision.

173. The 2013 tribunal made no order under section 20C for the reasons given in paragraphs 91 and 92 of its decision and, once again, this decision was not subject of an appeal to the Upper Tribunal. However, we are satisfied that we can consider an application under section 20C, at least to cover any costs that might have been incurred from the date that the first Upper Tribunal decision was remitted to us, until the date of this decision.

174. It is not clear that the former freeholder has incurred any costs to pass through the service charge, nor that it has any mechanism for doing so, now that it has divested itself of the freehold interest. In any case, no claim for the former freeholder's costs has been intimated.

175. Although the sums involved in this case are very small compared with the very high costs claimed by both parties, it remains true that the lessees raised a number of objections to the quality of management and the amount of service charges levied by the manager, which have been upheld.

176. Although we remain to be convinced that either the former manager or the former freeholder would be able to pass their costs through the service charge, for the avoidance of doubt and to bring this lengthy litigation to a finite end, overall, we consider that it is just and equitable to make an order under section 20C, so that none of the manager's or freeholder's costs can be passed through the service charge.

Summary

177. Within 28 days of the date of this decision the first and second respondents shall pay to the applicant lessees the sums of £274 and £2,719.33, respectively, calculated as follows:

Item	Full refund £	Refund to applicants (2/3)	
		By the first respondent £	By the second respondent £
POL 2011	250	166.67	-
POL 2012	161	107.33	-
POL 2013	161	-	107.33
S.20 notice	300	-	200.00
2013 costs	2,868	-	1,912.00
Management fee	750	-	500.00
Totals refunds:	**£4,490**	**£274.00**	**£2,719.33**

Name: Judge Timothy Powell **Date:** 16 December 2016

Rights of appeal

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

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

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

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

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

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