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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2017/0215**
Property	:	**Warren House, Beckford Close, London W14 8TR**
Applicants	:	**Mr Sailendra Nahar & Mrs Indrani Nahar and 15 other long lessees of apartments at Warren House as listed in the Appendix to this decision**
Representative	:	**Ms Sailendra Nahar**
Respondent	:	**FIT Nominee Limited** **FIT Nominee 2 Limited**
Representative	:	**Mr Simon Allison Counsel**
Type of Application	:	**S27A Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Members	:	**Judge John Hewitt** **Mr Stephen Mason BSc FRICS FCI Arb**
Date and venue of hearing	:	**25 January 2018** **Alfred Place, London WC1E 7LR**
Date of Decision	:	**15 February 2018**

DECISION

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The issue(s) before the tribunal and its decision

1. The issues before the tribunal concerned:

   1.1 The service charges payable in respect of the year 2016 as regards:
   a) the cost of buildings insurance;
   b) the cost of management; and
   c) the amount allocated to the reserve fund
   and whether the sums claimed to have been expended/allocated were reasonable in amount.

   1.2 Whether the amounts specified in the 2017 Budget for those three items listed above were reasonable in amount.

   1.3 The application made by the applicants for an order pursuant to s20C Landlord and Tenant Act 1985 (the Act) in relation to any costs which the respondent may have incurred in connection with these proceedings.

2. The decisions of the tribunal are that:

   2.1 In the 2016 accounts the amount of £325,105 claimed to have been expended on buildings insurance was unreasonable in amount and that a reasonable amount was £285,105.

   2.2 In the 2016 accounts the amount of £79,884 claimed to have been expended on management fees was reasonable in amount.

   2.3 In the 2016 accounts the amount of £311,670 allocated to the reserve fund was reasonable in amount.

   2.4 As regards the 2017 budget we make no findings because the budget was not put before us and the applicants did not adduce any evidence concerning it.

   2.5 It shall not make an order pursuant to s20C of the Act in relation to any costs which the respondent may incurred or may incur in connection with these proceedings.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the section/page number of the hearing file provided to us for use at the hearing.

Procedural background

3. In June 2017 the tribunal received an application [1/NC6] from Mr S Nahar and Mrs I Nahar pursuant to s27A of the Act. It included a related application pursuant to s20C of the Act concerning any costs which the respondent might incur in connection with these proceedings.

4. A case management conference (CMC) was held and directions were given on 29 June 2017 [2/D1]. The freehold of the development is registered with title number BGL28399 and the registered proprietor is St George West London Limited. By a lease dated 31 October 2003 the freeholder granted a head lease of the development to Kensington Westside Limited for a term of 999 years from 25 December 1999. That lease was registered at Land Registry with title number BGL47488. That lease was assigned to FIT Nominee Limited and FIT Nominee 2 Limited and on 28 July 2014 those two companies were registered at Land Registry as the proprietor of the headlease. The headlease was granted subject to and with the benefit of a number of occupational leases of individual flats (and other premises) within the development.

   In these circumstances FIT Nominee Limited and FIT Nominee 2 Limited are the immediate landlord of the residential long lessees of flats within the development and was correctly cited at the respondents.

5. At the CMC it was intimated that a number of other long lessees were dissatisfied with some elements of the management of the development and might wish to join in the proceedings. A number of such applications was duly made. By order dated 28 July 2017 [2/D8] a number of persons were directed to be joined as applicants to the application pursuant to rule 10. By agreement with all of the applicants it was further directed that Mr & Mrs Nahar were to be the lead applicants and all correspondence was to be sent to them unless and until any further or different direction was issued. For ease of reference a full list of the applicants is set out in the Appendix to this decision.

6. The parties duly served statements of case and witness statements. The hearing was ultimately set for Thursday 25 January 2018. Rather late in the day the applicants filed with the tribunal and served on the respondent a bundle of relevant documents for use at the hearing. It is divided into ten sections each of which is designated by reference to a letter or letters and within each section the pages are numbered commencing with 1. In all the bundle runs to 420+ pages.

The hearing

7. The hearing took place on Thursday 25 January 2018 and commenced at 10:00.

   A number of applicants and other long lessees attended and the applicants' case was mainly presented by Mr S Nahar with support from others present.

   The respondent was represented by Mr S Allison of counsel.

   It was agreed that the respondent should present its case first followed by the case for the applicants.

We heard oral evidence from the following:

Respondent		**Applicant**	
Mr Alasdair Wardrop	[10/EP25]	Ms Elena Tchaikovsky	[8/E1]
Mr Kent Martin Hellenas	[9/MH1]	Mr Kevin Jackson	[7/KJ1]
Ms Emma Power	[10/EP1]		

All of the witnesses formally produced their respective witness statements and having corrected any errors, confirmed that they were true. Each witness was cross-examined by the opposite party.

Following the evidence each party made closing submissions and the hearing concluded at 16:25.

The Development

8. The development is located in Kensington, London W14 and was undertaken by St George West London Limited. It comprises a number of blocks of about eight storeys each containing a total of 290 apartments. 231 of those apartments (laid out in six blocks) have been sold off on long leases and they have been allocated with an apartment number followed by address which commences 'Warren House'. The remaining 59 apartments are in a block known as Attwood House and that block has been leased to a Housing Association. Sometimes the whole development (including Attwood House) has been referred to as Warren House.

9. On site there are a number of facilities on offer to lessees of Warren House to include underground car parking, a business suite, a gymnasium, 24hr porterage and other facilities. There are different service charge regimes for Warren House and Attwood House which reflect the level of services on offer to the occupiers of those properties.

10. Evidently Warren House was intended to be a high quality and high value prestige development set in a prominent position close to Kensington High Street. Two-bedroom apartments are on the market for sale seeking to command prices of £1m+. Mr & Mrs Nahar own apartment 196 Warren House which is in fact two apartments adapted to create a four-bedroom home. When the lease was originally granted in 2002 the purchaser paid a premium of £2,158,101 for it. By all accounts Warren House is a complex and sophisticated high end development with significant mechanical and electrical equipment and a number of lifts serving upper floors.

11. To give an indication of scale, the service charge accounts show a total expenditure as follows:

2015 £1,060,981 **2016** £1,296,658

12. As will be explained shortly, whilst Warren House may have originally been intended to be and was marketed to be a quality high class

development something went wrong with plumbing. The plumbing contractors or sub-contractors did not shine at the installation of the service and waste pipes from baths, showers, hand basins and kitchen sinks. The poor workmanship and 'push-fit' pipework has resulted in multiple leaks many of which have generated insurance claims (some very substantial and one £600,000+) with the result that the insurer has made losses and the claims history has forced it to impose very high premiums on renewal. The poor-quality plumbing and consequent water damage may have been exacerbated by the high level of turnover in occupation of many of the apartments which, so the evidence was, are let for short terms and the fact that some are owned by wealthy overseas lessees who visit only occasionally and thus a leak may not be apparent for quite a long period and consequently the damage is more extensive and thus costlier to put right.

13. The focus of this case is the cost of the insurance and the cost of management.

The service charge regime

14. We have been provided with a sample lease – that for 196 Warren House [3/L1]. The lease grants a term of 999 years from 25 December 1999 at a ground rent which is £200 for the first 25 years and then increases during the course of the term. The lease demises two plots, nos 77 and 78 and allocates two parking spaces, nos 96 and 97.

15. There was no dispute between the parties as to the proper construction of the service charge regime. We can therefore set out a short summary of what is a comprehensive, and at times a complex scheme.

16. The Particulars provide for the lessee to contribute to certain costs:

(Sector 1) Estate Costs	0.3425%
(Sector 2) Private Apartment Estate Costs	0.4255%
Block Costs	7.7108%
Car Park Costs	0.35% for each space
Water Costs	100%

(Evidently each apartment is separately metered)

17. Clause 1 sets out a number of definitions but we need not replicate them here, save for the definition of 'the Maintained Property' and other definitions mentioned below.

18. Clause 2 defines the demise.

19. Clause 3 is a covenant on the part of the lessee to observe and perform the various matters set out in the Eighth Schedule.

20. Clause 4 is a covenant on the part of the lessor to observe and perform the various matters set out in the Sixth Schedule Part I and the Ninth Schedule.

21. Clause 5.6 provides:

"The Lessor shall have the power to make and at any time vary such Estate Regulations as it may reasonably think fit for the preservation of the amenities of the Development or for the general convenience of the occupiers of the Development.

The expression 'Estate Regulations' is defined to mean:

"... any rule or regulation made by the Lessor from time to time for the benefit and general convenience of occupiers of the Development and the use and enjoyment of the Development"

The expression 'the Development' is defined to mean:

"ALL THAT land from time to time comprised in Title Number BGL28399 including any land which may be added to the Development or substituted therefore but excluding any land which may be removed therefrom within 21 years of the date hereof together with any buildings or structures erected or to be erected thereon or on some part thereof"

22. The Second Schedule Part V defines 'the Maintained Property' to include the Main Structure, the Communal Areas and Facilities, the Common Parts, the Business Centre, the Gymnasium, the Parking Spaces, all plant rooms, substations and other such areas, all service installations, all plant and equipment forming part of or serving any part of the foregoing, of all boundary walls, fences and railings around the Development, the Car Park and all other parts of the Development which are from time to time intended to form part of the Maintained Property.

23. The Sixth Schedule Part I is headed:

The Maintenance Covenants

Relevant extracts include:

Sector 1 – Estate Costs
"4. Insuring and keeping insured the Development against all comprehensive risks applicable to a reasonably normal insurance policy covering a property similar to the Development and such other risks as the Lessor shall reasonably decide in the full reinstatement value..."

Sector 2 – Private Apartment Estate Costs
"3. Insuring and keeping insured the Business Centre and Gymnasium against all comprehensive risks applicable to a reasonably normal insurance policy covering a property similar to

the Business Centre and Gymnasium and such other risks as the Lessor shall reasonably decide in the full reinstatement value ..."

Sector 3 – Block Costs

"7. Insuring and keeping insured the main Structure against all comprehensive risks applicable to a reasonably normal insurance policy covering a property similar to the Building and such other risks as the Lessor shall reasonably decide in the full reinstatement value ... PROVIDED ALWAYS THAT:

7.2 The Lessor shall determine the company of office with which such insurance s placed and (being a reputable company) the sum insured shall be the full reinstatement value and the risks covered shall be the normal risks covered by a comprehensive policy

7.3 The policy shall be subject to such excesses and conditions as the insurers shall require (but not otherwise)

7.6 The interest of the Lessee for the time being of the Demised Premises and his mortgagees shall be noted on the policy whether generally od specifically"

24. The Sixth Schedule Part II is headed:

The Maintenance Expenses

Relevant extracts include:

"1. All sums spent in and incidental to the observance and performance by or on behalf of the Lessor of the covenants contained in Part I of this Sixth Schedule and any of the matters referred to in Clauses 2-15 of this Part II of the Sixth Schedule ...

2. Insuring any risks for which the Lessor may be liable as an employer of persons working or engaged in business on the Maintained Property ...

3.1 Providing and paying for the employment of such persons as may be necessary in connection with the upkeep and management of the Maintained Property and performance of the covenants on the part of the Lessor in this Lease including fees charges expenses salaries wages .... paid to any ... managing agent ... porters caretaker cleaners and building managers

8. Generally managing and administering the Maintained Property and protecting the amenities of the Maintained Property and for that purpose employing a firm of managing agents ...

13. Putting aside such sum as shall reasonably be considered necessary by the Lessor (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of expenditure to

Reviewing alternative quotations and liaising with brokers over proposed alternative submissions;
Monitoring the services provided by brokers, insurers, repair contractors and others

59. Although Ms Andrews-Gridiadek was unable to attend the hearing, her immediate line manager, Ms Emma Power did attend in her place. Ms Power's witness statement is at [10/EP 1].

Ms Power confirmed that the respondent received commission of 20% but that Zurich was not aware of that or what insurance services were provided by FMP on behalf of the respondents.

Discussions and conclusions on cost of insurance.

60. We propose to focus on the cost of insurance of £325,105 being the sum claimed to have been expended in the 2016 accounts.

We do not propose to consider the reasonableness of the amount for insurance in the budget for 2017 for two reasons:

1. Whilst this issue was mentioned in the application form and the directions dated 29 June 2017, it was not mentioned in the applicants' statement of case as an item in dispute and, moreover, the 2017 budget was not included in the bundle provided to us for the hearing; and

2. The 2017 budget merely drives the amount payable on the two on account payments to be made by lessees on 1 January and 1 July 2017. All lessees should by now have made those payments. The year 2017 has now ended and the actual cost of insurance will doubtless be included in the final accounts which will be issued in due course. When those accounts are to hand it will be open to the lessees to challenge the actual cost of insurance (and any other costs) should they wish to do so in the light of the matters set out in this decision.

61. There was no dispute that the respondents were under a duty to effect buildings insurance and that it was reasonable for them to incur a cost of insurance. No issues were taken as to the terms and scope of the insurance effected. The only challenge was as to the cost of the premium.

62. In a sense we accept the evidence of both Mr Jackson and Mr Wardrop. There was not much between them. They both reported on the quotes which had come from different underwriters within AXA but both of which were conditional upon the respondents organising the installation of the LeakSafe system within all or most of the apartments in Warren House.

The LeakSafe report was procured by AXA in April 2017. Thus, it does not have a direct bearing on the cost of insurance in the periods June 2015 to May 2016 and June 2016 to May 2017 which costs are (part covered) in the 2016 annual service charge accounts.

63. We understand that LeakSafe was incorporated in 2012 and its marketing materials tend to show the benefits of installation flow from about 2013 onwards. We infer that the technique is relatively new, but it does appear to be held in high regard by leading insurers.

64. The 2015/16 insurance year renewal was undertaken in the spring of 2015. We do not know whether the LeakSafe system had been brought to the attention of the respondent's brokers at that time. We accept Mr Wardrop's evidence that in his May 2015 report [10/EP81] he recorded that several major insurers were invited to provide a quote and that all declined save for Zurich. In those circumstances we find that it was not unreasonable for the respondents to have placed the cover and renewed with Zurich at the premium it had quoted. We also find that none of the potential insurers approached at that time suggested or made reference to the LeakSafe system even though those that declined to quote did so on the basis of the water damage poor claims history. We reject the applicants' submission that the respondents' brokers ought to have initiated an investigation with LeakSafe at that time. We infer it was a relatively new system and inevitably it takes time for new technical developments to come to the attention of practitioners in the field. We find that the respondents' acceptance of the advice from its brokers was a reasonable response and well within the range of options open to a landlord of a block such as Warren House acting reasonably.

65. The 2016/17 insurance year renewal was undertaken in the spring of 2016. We accept Mr Wardrop's evidence that the market was tested with approaches to major insurers who declined to quote. Clearly a debate with Zurich took place as a result of which Zurich offered to reduce the premium if the water damage excess was increased. Again, and for the same reasons given in paragraph 64 above, we find that the premium was reasonable in amount.

66. The 2017/18 insurance year renewal was undertaken in the spring of 2017. In addition to instructing its brokers, the respondents instructed its managing agents, Premier Estates, to use its (significant) contacts with brokers and insurers to see if less expensive cover might be available. We find it was to the credit of the respondents that it took this initiative. It was a result of that that AXA became involved and in April 2017 AXA asked LeakSafe to investigate and report. By May 2017 the AXA conditional quote was to hand. Whilst it and its implications were considered, the respondents effected cover for a three-month period 1 June – 31 August 2017. We find that was a reasonable and prudent course to take and again we find it to the credit of the respondents that they did so. We find the cost of £79,036.30 was reasonable in amount. When pro-rated over a 12-months period it equates to £316,145.20.

67. Mr Wardrop sought clarification of AXA's position on the conditions it would impose as regards the installation of the LeakSafe system. The evidence suggests there was some lack of certainty. This was not assisted by the fact that Mr Wardrop and Mr Jackson were dealing with two different underwriters within the AXA organisation. From the evidence what it came down to was that AXA wanted a three-year contract, a contract to be placed by the respondents with LeakSafe for installation of the system to commence within three months of inception, a commitment from the respondents that they would be able to and would facilitate the fitting of the Leaksafe system; AXA would not indicate its position as to the percentage take-up of installations or a time frame but would formulate its position as time went along after the three-year deal was in place. AXA appeared to reserve the right to cancel the contract if it wished and that if its loss ratios were above certain levels the rating would be reviewed.

68. Such uncertain terms were not acceptable to the respondents and it decided not to go with AXA but to stay with Zurich. A policy was effected with Zurich to cover 1 September 2017 to 31 August 2018 at a premium of £313,567.94 (incl of IPT).

69. In support of that position Mr Allison submitted that it was not unreasonable of the respondents not to go with AXA. The conditions were uncertain in scope and consequence. AXA required the respondents to enter into a contract with LeakSafe and give a commitment that they system would be installed. Mr Allison said that the landlord does not have a right of entry into each apartment to install such a system. Some lessees might be willing but some might not. Even if there was a right of entry, obtaining a discretionary remedy of an injunction and enforcing it against lessees, some of whom are wealthy overseas residents would be problematic, time-consuming and costly. Even with cooperation the logistics of organising entry and liaison with LeakSafe and lessees/sub-tenants/occupiers would be time-consuming and costly so that the cost of management would increase. All that for a system that would be more expensive in the short term but might (but only might) lead to lower premiums in the mid to longer term.

70. Mr Nahar and some of the applicants present were of the view that many lessees would be willing to afford access if that was likely to lead to lower premiums. Evidently this was their subjective view and, so far as we are aware, no survey has been carried out to test it.

71. We observe that if the respondents had decided to go along with the AXA proposal, that would amount to a qualifying long-term agreement and a prudent landlord would have consulted on it pursuant to s20 of the Act before entering in to it. That itself would have been time-consuming and costly. We emphasise that this was not put forward by the respondents that it formed part of their decision-making process.

72. The respondents are substantial institutional investors. Their nature is to be cautious and prudent. We find that renewal of the 2017/18 policy with Zurich, a known entity, was within the range of options open to such a landlord. Some landlords might have decided to go with AXA, but we cannot say that it unreasonable of the respondents not to do so. Having weighed all of the circumstances we find that it was not unreasonable of them to have renewed the 2017/18 policy with Zurich.

73. Clearly going forward the respondents will need to keep the issue under close review and there may well be a range of options open, including perhaps a trial in one block where there are known to be a good number of lessees willing to provide access for the installation of a LeakSafe system. Any lessons learned from such a trial would help drive the next phase.

74. As to commission, for the 2017/18 renewal the respondents chose to take a cut in commission from 20% down to 10% in order to achieve a lower premium. We were not told why such a move could not and should not have been made earlier.

75. The respondents evidence on commission was unsatisfactory and muddled. In relation to prior years we infer the insurer was informed that a commission of 25% was required and that cost of that was then factored into the premium. How that commission was then shared as to 5% to the broker and 20% to the landlord is not clear. Mr Wardrop did not know how or when such an arrangement was arrived at and between whom. He accepted that Zurich was not part of it and it was a purely private arrangement as between the landlord and the broker.

76. Mr Allison relied upon the authority of *Williams v London Borough of Southwark* [2001] 33 HLR 22, decision of Lightman J, for the proposition that a landlord was entitled to retain a commission received from an insurer where the landlord carried out services on behalf of the insurer which, if not provided by the landlord, the insurer would provide them at its cost and factor that cost of doing so into the premium to be charged. The *Williams* case also concerned Zurich as it happens. In paragraph 5 Lightman J explained that pursuant to an agreement made in 1995 Zurich assigned to the landlord the responsibility of local claims handling and to pay a commission of 20% as remuneration to the landlord for doing so. He went on to say:

"In the circumstances I can see no reason why the position should be any different in the case where Zurich's contract for local claims handling is with the Council from a case where Zurich retained the responsibility or employs some other agent to fulfil it. The 20% payment to the Council is not in law or fact a rebate or deduction from the premium payable. It is a payment for services. The Council was accordingly under no obligation to pass it on the Claimants."

77. That situation is quite different to the present case. Here there is no agreement as between Zurich and the landlord. The landlord is not

contracted to provide any services to Zurich and it does not provide a local claims handling service. The evidence of Mr Wardrop was that when claims were made they were passed to Zurich which then directed how they should be handled and if there was any service Zurich required the broker to perform in relation to it.

78. The list of tasks asset out in Ms Andrews-Griadek's witness statement [10/EP5] is plainly generic and not specific to Warren House. The respondents, as landlord have the obligation to effect insurance. That entails instructing brokers, considering brokers' reports, responding to lessee's requests for information, passing claims on and many other tasks. These are all part and parcel of the landlord's obligation and goes with the territory of owning a ground rent investment. Save in the clearest of terms in a lease, a landlord cannot delegate those obligations to a third party and recover the cost incurred from its lessees.

79. We accept that some of the tasks listed appear to be undertaken as the request of Zurich. Those services do not appear to be the subject of any formal agreement between Zurich and the landlord. There was no evidence put before us that if those services were not performed, Zurich would increase the cost of the premium. The evidence of Ms Power was clear that Zurich was not aware of what insurance services were provided by FMP to the respondents.

80. Where a landlord receives a commission from insurers simply for being instrumental in placing the business with the insurer, then the starting point must be that the landlord should account to the lessees for all of the amount it has received. The landlord is a trustee holding and expending trust funds. Where a landlord directs what percentage commission is to be paid to the broker and that cost is factored into the amount of the gross premium, the question arises as to whether the additional cost of the premium attributable to the amount of the commission had been reasonably incurred. The moreso perhaps where the amount of the commission received increases (substantially) because the premium has increased by reason of the claims record, yet the cost of the services provided by a landlord on insurance related matters may not necessarily increase at the same rate.

81. The respondents have delegated there role as landlord to an asset manager, FMP. That appears to be quite a substantial organisation perhaps managing a wide range of assets such that it has a department dedicated to insurance. The cost of doing that is a private matter as between the respondents and FMP and ought to be quite outside the service charge regime. Probably for that reason the respondents did not put any evidence before as to the nature of the arrangements between them and FMP.

82. In this case in respect of the insurance years 2015/16 and 2016/17 the respondents plainly received a substantial commission from insurers.

We infer the rate of commission is calculated net of IPT.

In the 2016 service charge accounts the total cost for 'Buildings and public liability insurance' was put at £325,105.

In the insurance year 2015/16 the cost of insurance, net of IPT was £254,371 – which equates to £21,197 per month. So that seven months' cost will amount to £148,379.

In the insurance year 2016/17 the cost of insurance, net of IPT was £325,568 – which equates to £27,130 per month. So that five months' cost will amount to £135,653.

We infer that in broad terms the cost of insurance in the 2016 service charge account, net of IPT was about £284,000. That was inclusive of 25% commission so that we arrive at:

Net cost	£227,200
Commission	£ 56,800
	£284,000

Of the commission of £56,800, one fifth went to the broker = £11,360 and fourth fifths went to the respondents = £45,440.

83. In the present case we find that the respondents should account to the lessees for a substantial part of the commission they received in the service charge year 2016.

We acknowledge that the respondents may have incurred some modest costs on insurance related matters, which costs might reasonably fall within the service charge regime. However, it must also be recognised that many of the items listed in Ms Andrews-Griadek's witness statement [10/EP5] are plainly outside of that regime.

Taking a broad view and doing the best we can with the imperfect evidence and materials before us we find that it is unreasonable that any more than £5,440 commission should be retained by the respondents. The respondents have not demonstrated to us that any greater sum was reasonably incurred or reasonable in amount.

84. For these reasons we find that the reasonable (net) cost of insurance in the service charge accounts for 2016 should be reduced to £285,105.

Cost of management

85. The applicants challenged the cost of management. Premier Estates were appointed as managing agents in early 2014 and took over from the previous managing agents. Ms Power told us that some representatives of some lessees were involved in the appointment process. The ultimate decision was taken by the respondents but in arriving at their decision they took soundings from lessee

representatives who were present at the interviews of potential managing agents.

86. Mr Hellenas told us that when appointed there were staff on site on a full time basis and they took them over. There is a site or estate manager who manages the 24-hour concierge team, the cleaning team, the handymen, and who oversees outside contractors when on site. In addition to that he liaises with lessees and residents, responds to reports of faults or problems, implements repair needs, carries out site inspections, is a point of contact with lessees, and letting agents and tries to manage short term lets which is something of a problem at Warren House, and gives direction as and when required, amongst a range of other day to day issues that might arise in such a large and prestigious development.

87. The cost of the on-site staff, to include the manager, the concierge and cleaning teams was:

2015	£241,595	**2016**	£276,617

88. Separately from above is Premier Estates fees as managing agent. These were:

2015	£77,555	**2016**	£79,884

Excluding VAT these fees equate to a unit cost (on the basis of 290 apartments) of:

2015	£214	**2017**	£220

89. In the applicants' statement of case and evidence there is no allegation or complaint of poor service. During the hearing some of the applicants present suggested that Premier Estates did not always respond to correspondence sent to them promptly and sometimes not at all, but no specific examples were brought to our attention.

90. The main thrust of the applicant's complaint, at paragraph 7 of their statement of case was that the costs incurred were *"... way above the alternative quote obtained by the Applicant."*

That is a quote given by Willmotts in September 2017 by way of a tender proposal. A copy is at [4/SCA15]. From what we can see the scope and range of services proposed is broadly the same as those provided by Premier Estates, being a dedicated full-time property manager as a single point of contact backed up by a team as required, to include the management of on-site staff employed directly by the client.

The fee quote stated that for a development such as Warren House they would normally charge £450 + VAT per unit, but as Warren House was

close to their offices they would be prepared to reduce that to £350 + VAT per unit with a reduction of 50% for the social housing block.

On that basis the fee proposal was:

Warren House	£82,250 + VAT
Attwood House	£10,500 + VAT
Total	£92,750 + VAT

Those prices were said to remain open for 3 months.

91. We are only concerned with the actual cost of management fees for 2016. The above fee quote in September 2017 is not particularly helpful to us in that respect.

92. It is clear that the above quote is quite a bit more expensive than the fees agreed with Premier Estates for 2016.

93. The subject development is large, complex and sophisticated. It is located in central London and whilst not quite prime, it is fashionable and high-end. Inevitably there is some economy of scale to be born in mind. Drawing on the accumulated experience of the members on management fees we are satisfied that the costs incurred in 2016 were well within the range of costs of management of what can be considered as reasonable for a development of this type, size and age and typical of what we see on a regular basis.

94. Accordingly, we find that the costs of management of £79.884 incurred in 2016 were reasonable in amount.

The reserve fund

95. This was mentioned in (6) in the directions but was not followed up in the applicants' statement of case or evidence. Nevertheless it was an issue of some concern to the some of the applicants present and Mr Hellenas said that he was in a position to explain the significant increase, in general terms.

96. There was no dispute that the terms of the lease provide for a reserve fund.

The amounts allocated to it were:

2015	£103,890	**2016**	£311,670

The Estate, the Private Estate, each block and the two car parks has its own ring-fenced reserve fund – as shown at [9/MH22].

97. Mr Hellenas explained that Premier Estates were first appointed in 2014 and it has taken a while to get to know and understand the

development and its complex and sophisticated services, plant and equipment.

97. External surveyors were engaged to carry out an itemised schedule of anticipated work to consider such matters as structural repairs and M/E facilities throughout, end of life spans and cyclical works (such as internal common parts redecorations) and to report. That report was received and considered by the respondents and copies have been provided to some representatives of some lessees. A rather complex spread sheet was sent to all lessees in an effort to explain and justify the substantial increase. Mr Hellenas said the reserve funds were kept under close review and the likelihood was that for the immediate future the amounts to be allocated would increase rather than stay the same.

99. Mr Nahar confirmed that the spreadsheet had been received but complained it was complex and could not be reconciled to accounts or to actual or proposed expenditure. Some of the applicants present made a plea for Premier Estates to be more open and transparent and to reply to correspondence.

Both Mr Hellenas and Ms Power said that they would endeavour to respond to any specific queries which those present had and that they should contact them direct to pursue that.

100. On the basis of the evidence before us we concluded that the amount allocated to the reserve fund in 2016 was a reasonable amount. Of course, as projects are undertaken and actual costs are ascertained, it is open to lessees to challenge them in the usual way.

The s20C application

101. Mr Nahar pursued an application for an order pursuant to s20C in relation to all costs which the respondents might incur in connection with these proceedings. He said the applicants had raised legitimate issues. Mr Nahar left it to the tribunal to decide the application.

102. Mr Allison opposed the application.

103. On this occasion it is not for the tribunal to interpret the lease to ascertain what its provisions are as regards the service charge account and costs of proceedings. That said, prima facie the subject lease does make reference to:

"All other expenses ... incurred by the Lessor ... any legal or other costs bona fide incurred by the Lessor and otherwise not recovered in taking or defending proceedings (including arbitration) arising out of any lease of any part of the Development"

It appears from the above that the landlord may have a contractual right to pass the costs of these proceedings through the service charge.

104. Our approach is: If there is a contractual right to pass the costs through the service charge should that right be limited or curtailed in any way? We find the answer to be: No. There is no material before us to suggest that it would be just and equitable to interfere with any contractual rights the respondents might have. To quite a large extent the applicants have failed to establish their case, mostly due to their failure to provide evidence or put forward persuasive arguments. The other side of that coin is that the respondents have in some measure seen off most of the attack to the service charge accounts.

105. Accordingly, we decline to make an order on the application. Of course if the costs are passed through the service charge accounts and if lessees consider that not to be right or that they were unreasonably incurred and/or unreasonable in amount, it will be open them to challenge those costs in due course in the usual way.

Judge John Hewitt
15 February 2018

Appendix
List of Applicants

Name	Warren House Apartment Number
Sailendra Nahar & Indrani Nahar	196
Neelu Jhaveri	79
Khadjija Radwan	54
Mohson Farshidfard	34
Miss V J Hobday	45
Ms V Kumar	162
Irfan Tayebaly	176
Wynne Rooms	53
Mr Z Paegle	199
Millford George	203
Brenda Ring	224
Alberto Statti	154
Wafi Boulos & Rowena Boulos	80
Qasim Khabim	190
Ekam-Dick Francois & Rohel	170
Paul Samengo-Turner	45

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.