FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/00CU/LIS/2018/0013
Property	:	Flats 1-6 Wedgewood Court, Green Lane, Shelfield, Walsall, West Midlands, WS4 1RN
Applicants	:	Leaseholders of Wedgewood Court
Representatives	:	Mr Paul Thomas (Flat 1) and Mr Mark Taylor (Flat 3)
Respondent	:	Stanley N Evans (Properties) Limited
Representatives	:	Metropolitan PM Limited (MetroPM); Mr Sam Phillips, Counsel
Type of Application	:	(1) Application under section 27A of the Landlord and Tenant Act 1985 for the determination of the payability and reasonableness of service charges in respect of the subject property (2) Application under Paragraph 5(A) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order relating to litigation costs pertaining to some of the flats at the subject property (3) Application under section 20C of the Landlord and Tenant Act 1985 for an order for the limitation of costs
Tribunal Members	:	Judge David R Salter (Chairman) Mr David Satchwell FRICS (Surveyor)
Date of Hearing	:	22 October 2018
Date of Decision	:	19 March 2019

DECISION

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Background

1 This is a decision made in respect of an application ('the Application') by the leaseholders ('the Applicants') of Wedgewood Court, Green Lane, Shelfield, Walsall WS4 IRN ('the subject property') which was dated 2 March 2018. The Applicants seek the following - first, under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), determinations by the Tribunal as to the payability and reasonableness of service charges in respect of the subject property for the service charge years 2016-2017; secondly, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), an order from the Tribunal that reduces or extinguishes the Applicants' liability to pay "an administration charge in respect of litigation costs"; and, thirdly, under section 20C of the 1985 Act, a determination by the Tribunal that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be taken into account in determining the amount of any service charges payable by the Applicants.

2 Directions were issued by a procedural judge on 3 May 2018. These Directions were concerned, principally, with the processes associated with the preparation and submission of statements of case and related documents by the parties to the Application, including the dates by which such documentation should be provided. Subsequently, for reasons which are not material to this Application, the various dates for the submission of this documentation were extended.

3 In furtherance of the amended Directions, the Applicants submitted a statement of case dated 31 May 2018 together with supporting evidence which was received by the Tribunal on 8 June 2018. Similarly, the Respondent submitted a statement of case dated 16 July 2018 together with supporting evidence which was received by the Tribunal on 17 July 2018.

4 Thereafter and purportedly in furtherance of the Directions of 3 May 2018, the Applicants submitted a further statement dated 12 August 2018 which was received by the Tribunal on 15 August 2018 ('the further statement'). This statement re-iterated the Applicants' case in respect of each of the issues raised in the Application which had been set out in its initial statement of case of 31 May 2018, but it also raised and considered, with supporting evidence, several additional and, arguably, related issues. As a consequence, the Respondent submitted an additional statement, together with supporting evidence, dated 15 October 2018 which was received by the Tribunal on 16 October 2018 in which it addressed the additional issues which had been raised by the Applicants.

Inspection

5 The Tribunal inspected the subject property, externally, on 22 October 2018. The inspection was carried out in the presence of Mr Paul Thomas (Flat 1) and Mr Mark Taylor (Flat 3), the representatives of the Applicants, Mr Phil Bird and Mr Faraz Ahmed, both of Metro PM, and Mr Sam Phillips of Counsel representing the Respondent.

6 The subject property comprises a two storey purpose built and self-contained single block of flats (circa, early 1970s). There are six flats to which access is gained through a single staircase. It is constructed of brick with a flat roof. There are grounds to the front and rear, and garages for each flat are located in a single block towards the rear boundary of the subject property.

Hearing

7 A Hearing was held later on the same day at the Centre City Tower, 5-7 Hill Street, Birmingham. Leaseholders from Flats 1, 3, 4, 5 and 6 were present. Mr Bird, Mr Ahmed and Mr Arnold attended on behalf of MetroPM, whilst Mr Phillips attended as the Respondent's representative.

At the beginning of the Hearing, the Tribunal stated that it was minded not to entertain the additional issues included in the Applicants' further statement. However, following representations by Mr Phillips that a case had been prepared by the Respondent in response to these issues, that the Respondent was willing to proceed, and that to proceed would be 'commercially pragmatic', the Tribunal indicated that, in the particular circumstances of this case and taking into account the resource implications for the parties and Tribunal in the event of those issues being reserved for a further application it would, exceptionally, hear the parties on these issues.

The Applicants' case was presented by Mr Thomas and Mr Taylor. Mr Phillips presented the case for the Respondent. The latter submitted a skeleton argument to the Tribunal to which he referred in making his presentation on behalf of the Respondent.

8 Subsequent to the Hearing, the Tribunal wrote to Mr Taylor and Mr Thomas to confirm the Tribunal's request at the Hearing for office copies from HM Land Registry of the property and proprietorship register and of the leasehold rights and obligations referred to therein contained within the registered titles of the leaseholders of each of the flats at the subject property. The Tribunal also wrote to MetroPM in furtherance of an undertaking given by the Respondent at the Hearing to provide the Tribunal with a copy of the service cost account ending with the date upon which Wedgewood Court RTM Company Ltd ('the RTM') took over the management of the subject property, namely 5 June 2017 ('the final service cost account'). These documents were duly received by the Tribunal.

Issues in Dispute

9 The Applicants indicated in their initial statement of case and affirmed in their further statement that each of the issues raised in the Application related to concerns over service charges incurred prior to the acquisition of their right to manage through the RTM on 5 June 2017 and which were regarded as unreasonable. Further, the Applicants indicated that, similarly, the additional issues were linked to that same period.

10 Those issues were as follows:

Issues identified in the Application
- Solicitor's fees - £4,636.00
- Driveway resurfacing - £7,136.00
- Stop taps - £1,920.00
- Landing window - £630.00
- MetroPM surfacing supervision fee - £483.00
- Gutter repair - £504.00
- Grounds maintenance - £1,130.00

Additional Issues
- Electrical intake cupboard - £915.99
- MetroPM roof works supervision fee - £181.00
- Unpaid bills - £987.47

Leases – Flats 1-6

11 The pertinent provisions of the leases of each of the flats are similar in form and content. The Tribunal noted that the term of years of the leases of Flats 5 and 6 had been extended, but this has no bearing on the matters for the determination of the Tribunal.

The following provisions are taken from a lease dated 27 October 1971 ('the lease') relating to Flat 1 and they are indicative of the provisions in the leases of the respective flats which are material to this Application.

In clause 4(21) of that lease, the lessee covenants

'To pay…annually on a date fixed by the Lessors to the Lessors or their managing agents the due proportion attributable to the demised premises of the cost of the upkeep of the common parts and the provision of services specified in the Schedule hereto and which sum or sums shall be regarded as and be recoverable as rent'

'Common parts' are defined in the recitals of the lease as follows:

'The Lessor will retain parts of the said Block of Flats and certain ground common to the owners or occupiers of the flats within the curtilage of the said Block of Flats and to be used in common with the Lessors their successors in title and tenants and the Lessees of all the flats (hereinafter called "the common parts")…'

The 'services' to be provided by the lessor and specified in the Schedule to the lease include the following:

'2. The cleansing maintenance repairing renewing and decorating of the following matters or things used or enjoyed by the Lessee in common with the Lessors and other tenants of the said Block of Flats and Garages :-

(a) The roofs gutters pipes and other things for conveying rainwater from the said building –
(b) The water pipes drains sewers and wires and other water and electric installations in under or upon the said building enjoyed or used by the Lessee in common with other Lessees or Tenants of the said Block of Flats and Garages –
…
(d) The drives parking areas paths gardens and pleasure grounds of the said Block of Flats and Garages situate at the front rear or side thereof –
(e) The driveway and accesses to the said Block of Flats…'

In clause 5 of the lease, the lessor covenants to be 'responsible for the items and provide the services set out in the Schedule…' subject to the lessee making the contributions and payments referred to in the lease, notably payment of the rent and the service charge.

Statutory frameworks

12 Section 27A of the 1985 Act, so far as material, provides:

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were included for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

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

13 Sections 18 and 19 of the 1985 Act provide:

18(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

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

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 provision of services for 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.

14 Paragraph 1 of Part 1 of Schedule 11 to the 2002 Act, so far as material, provides for the meaning of "administration charge" as follows:

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –
...

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

1(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither –
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

15 Paragraph 2 of Part 1 of Schedule 11 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

16 Paragraph 5A of Part 1 of Schedule 11 to the 2002 Act provides, so far as material, for the limitation of administration charges in respect of the costs of proceedings as follows:

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

17 The First-tier Tribunal is a 'relevant court or tribunal'.

18 Section 20C of the 1985 Act, so far as material, provides:

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before…the First-tier 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 other person or persons specified in the application…

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

Submissions

19 The parties' submissions on each of the issues were as follows. For ease of reference only, the statement of the Applicants' submission on each of the issues does not differentiate between written evidence presented in the Applicants' statement of case, its further statement and the oral evidence given by Mr Taylor and Mr Thomas. A similar approach is adopted in relation to the written evidence submitted by the Respondent in its statement of case and in its statement dated 16 October 2018:

Issues identified in the Application

(i) Solicitor's fees - £4,636.00

The Applicants explained that the solicitor's fees had been incurred in relation to the collection of service charge arrears that had arisen in respect of Flats 3, 5 and 6. These fees had been recovered through the service charge account. The Applicants submitted that there was no provision in any of the leases pertaining to these flats which provided for the recovery of such fees through the service charge. Consequently, the entirety of the solicitor's fees should be returned to the Applicants.

The initial submission of the Respondent in its statement of case and endorsed by Mr Phillips in his skeleton argument contested the Applicants' submission that the solicitor's fees could not be recovered through the service charge. At the Hearing, however, Mr

Phillips informed the Tribunal that the Respondent withdrew its objection to this submission and accepted that the legal fees could not be collected through the service charge.

(ii) Driveway resurfacing - £7,136.00

The Applicants informed the Tribunal that these resurfacing works were to be paid for through the service charge as part of the rolling cycle of works required by the leases of each of the flats. In this regard, a sum of £5,000.00 had been allocated to resurfacing in 2016 as shown in the planned expenditure cycle for the subject property which the Applicants made available to the Tribunal. The Applicants averred that MetroPM collected this sum.

Further, the Applicants submitted that the resurfacing work carried out by Rio Surfacing Ltd for £4,836.00 was undertaken 'on the wrong part of the property', and it was sub-standard in quality. In the latter respect, there were undulations in the resurfaced area and it 'holds water'; a photograph of standing water on the resurfaced area was adduced in evidence by the Applicants. The Applicants added that at a meeting with leaseholders Mr Faraz Ahmed, the property manager of MetroPM, had accepted these points. The Applicants opined that the resurfacing should have been carried out on an area of the driveway to the front of the building i.e. on the entrance road as had been intimated by Metro PM in a letter dated 18 February 2016 which was sent to leaseholders. In that letter, which was adduced in evidence, it was stated by Metro PM that following a health and safety survey the poor quality of the road surface was a particular concern and that a surfacing contractor had estimated that works 'on the entrance road only can be carried out for a cost of £4,000.00 + VAT.'

The Applicants also questioned the amount which had been paid for this resurfacing work and suggested that a reasonable cost for this work would have been a maximum of £2,700.00. In this respect, the Applicants presented a quotation from Compact Surfacing and Son Limited ('Compact Surfacing') dated 28 June 2017 for the resurfacing of 75 square metres. In the Applicants' opinion, the resurfaced area comprised only 75 square metres, which explained the size of the area for which the quotation was sought, not 100 square metres as suggested by the Respondent. Compact Surfacing quoted a price of £2,250.00 (plus VAT) with each square metre costed at £30.00. The Applicants added that they did not nominate contractors during the section 20 consultation, because they had formed the impression that such nominations were not welcome.

The Respondent informed the Tribunal that a health and safety survey had been undertaken by Quantum Compliance on 9 December 2015, which was adduced in evidence, and showed that the driveway required resurfacing as a matter of urgency. The leaseholders had been aware of the condition of the driveway for some time prior to the survey. Mr Taylor had suggested during this period that he might obtain a quotation for the work that was needed but did not do so. In view of the extensive areas of tarmacadamed driveway at the subject property and related cost of resurfacing each of these areas, the Respondent decided 'to do the worst and most frequently used areas as a priority and it was only these areas which were re-covered – being the section lateral to the main building.' The Respondent provided a photograph of this resurfaced area.

Further, the Respondent indicated that the work on the driveway had been subject to a consultation under section 20 of the 1985 Act. In this respect, the Respondent presented a notice of intention to carry out work (re-surfacing works) dated 19 February 2016 ('the notice of intention') and a statement of estimates in relation to proposed works (re-surfacing) dated 17 May 2016 ('statement of estimates') which had been served on its behalf by MetroPM. The Respondent added that the leaseholders were given the opportunity to nominate contractors but no written nominations were received. The

Respondent indicated that, in the event, the work was carried out by 'a properly qualified and accredited contractor', Rio Surfacing Ltd, and, in its opinion, 'the correct area was resurfaced to a very good workmanlike standard.' The Respondent denied that it was suggested at the site meeting on 19 March 2018 to which the Applicants referred that the wrong area of driveway was resurfaced or that the work, which had been carried out on the driveway, was to a poor standard.

The Respondent also made various observations about the quotation from Compact Surfacing provided by the Applicants. First, this quotation makes no reference to the preparation of the ground, the provision of a proper health and safety policy, risk assessments, method statement, provision of welfare facilities, relevant insurances and guarantees. Secondly, it relates to 75 square metres whereas the actual area resurfaced is closer to 100 square metres. Thirdly, it would appear that Compact Surfacing is more experienced in working on domestic driveways and this is reflected in its quotation which is not suitable for a high-wearing driveway.

Finally, the Respondent stated it did not understand the Applicants' citation in its Application of a sum of £7,136.00 for resurfacing the driveway when the actual cost of the work was £4,836.00 (including VAT).

Mr Phillips made the following points. First, the sum challenged by the Applicants is not the sum that was demanded or charged and the figure of £5,000.00 to which the Applicants referred was a budgeted amount. The resurfacing work was charged at £4,836.00 whereas, without explanation, the sum referred to in the Application is £2,300.00 greater. Secondly, the quotation provided by the Applicants is incomplete and is 'inappropriately lacking in detail, does not make reference to any preparatory or health and safety works and does not give any indication that the higher-traffic needs of the area have been considered' and, therefore, cannot be regarded as a like-for-like comparison. Thirdly, this quotation may be contrasted with the notice of intention served by the Respondent which sets out the nature and extent of the works to be carried out. Fourthly, Mr Phillips noted that, although there was no requirement for the Respondent to obtain the lowest price for the work in the market, the statement of estimates showed that the Respondent had chosen the cheaper of the two quotations which it had received with the alternative quotation amounting to £2,408.00 more than the quotation received from Rio Surfacing Ltd. Finally, it was appropriate and reasonable for the Respondent to take the decision to work, initially, on the area of the driveway which had been resurfaced for the reason expressed in the Respondent's statement of case, namely that it was in the worst condition and most frequently used area of the driveway.

Mr Phillips also added that the Applicants had provided no expert evidence to support their contention that the resurfacing which had been carried out was sub-standard. In his opinion, the quality of this work was evident on inspection and it was demonstrably not of a poor standard. The photograph submitted by the Applicants showed only a thin film of water on the resurfaced area which did not cover the whole of the area. As to the size of the area which had been resurfaced, Mr Phillips intimated that this was roughly 95 square metres. The cost of the work on this area had not been calculated simply on a cost per square metre basis but had included what he described as 'plant and people' costs. On this basis, he submitted that the difference in cost between resurfacing this area and 75 square metres, which the Applicants suggested was the size of the area which had been resurfaced, would be minimal. He opined that this difference would also be minimal if the costs were calculated on a per square metre basis.

(iii) Stop taps - £1,920.00

The Applicants sought reimbursement of this sum which they submitted had been demanded for works which had not been carried out. The sum was collected but it was

not used for the purpose for which it was allocated. In this respect, the Applicants adduced in evidence a notice of intention to carry out works (stop taps) dated 19 February 2016 which had been served by MetroPM on behalf of the Respondents. The notice stated that 'all stop taps have been examined and it was found that all six stop taps have seized and will require replacement' at an estimated cost of £1,600.00 plus VAT.

The Respondent indicated that proposed work on the stop taps had not been carried out and, consequently, no service charges were collected in relation to this work. Further, the Respondent intimated that all monies received and expended had been properly accounted for and referred the Tribunal to the service charge accounts for the year ended 24 June 2016 ('the 2016 service charge accounts'). Mr Phillips pointed out that no expenditure, which could be deemed to be 'reasonably incurred' and 'reasonable in amount' or otherwise, had been incurred and, therefore, there was no scope for the Tribunal to make a finding under section 27A of the Act. Consequently, he submitted that the Applicants' challenge in this respect must fail.

(iv) Landing window - £630.00

In the Application, the Applicants sought reimbursement of this sum which they submitted had been demanded for work that was not carried out. In the Applicants' opinion, this work should have been carried out whilst MetroPM were managing the subject property, because the window was in a poor condition and there were sufficient funds available for the window to be replaced. The Applicants revised this sum to £500.00 in in its further statement to reflect the cost incurred by the RTM in replacing this window which was evident in an invoice dated 19 September 2017 presented to the RTM by C.M.F. The Applicants also provided the Tribunal with photographs of the landing window before and after the replacement window was installed by C.M.F.

The Respondent indicated that, as with the stop taps, proposed work on the landing window had not been carried out and, consequently, no service charges were collected in relation to this work. Further, the Respondent intimated that all monies received and expended had been properly accounted for and, again, referred the Tribunal to the service charge accounts. Mr Phillips reiterated his observations in relation to the stop taps, namely that no expenditure, which could be deemed to be 'reasonably incurred' and 'reasonable in amount' or otherwise, had been incurred, and, therefore, there was no scope for the Tribunal to make a finding under section 27A of the Act. Consequently, he submitted that the Applicants' challenge in this respect must fail.

(v) MetroPM surfacing supervision fee - £483.00

The Applicants questioned the payment of this fee because, in their opinion, the resurfacing was applied to a part of the driveway that was not designated for resurfacing and it had been carried out to a poor standard as illustrated by the photograph showing standing water on the resurfaced area. In the former respect, the Applicants reiterated that this was evident from the letter dated 18 February 2016 which was sent by MetroPM to the leaseholders which referred to resurfacing work on the entrance road. The Applicants stated that work on the entrance road had not been carried out. In these circumstances, the Applicants sought 'a full reimbursement' of this fee.

The Respondent indicated that this fee was charged by its managing agent, MetroPM, for supervising the work relating to resurfacing of an area of the driveway. This supervision involved 'meeting contractors on site, preparing specifications, serving the statutory notices and managing the works.' The fee comprised 10% of the final invoiced amount for the resurfacing work (see above, paragraph 19(ii)). Further, the Respondent stated that, notwithstanding the Applicants' claim to the contrary, the correct area of the driveway had been resurfaced and opined, relying, in part, upon a supporting photograph, which it

had submitted in evidence, that the resurfacing had been carried out to a high standard. Mr Phillips submitted that the resurfacing work had to be supervised and indicated that the sum in question had been contractually agreed. The fee was not unreasonable in circumstances where the resurfacing was undertaken in areas that were used by vehicles and that for this reason and for those which he had cited in relation to the driveway resurfacing (see also above, paragraph 19(ii)) the Applicants' challenge to this fee must fail.

(vi) Gutter repair - £504.00

The Applicants stated that the cost of this repair was incurred in relation to works which took the roofing contractors only 15 minutes to complete, involved the replacement of less than 6 metres of guttering and was not an emergency. The Applicants suggested that the length of the guttering which had been replaced could be gauged by reference to various photographs which had been adduced in evidence. In these circumstances, the Applicants submitted that the cost of this gutter repair was excessive and unreasonable.

The Respondent informed the Tribunal that some 10 metres of guttering was replaced at the rear of the subject property. It provided an invoice from Integral Roofing & Maintenance Services Ltd ('Integral') which showed that the contract price of £504.00 comprised £180.00 for labour and £270.00 for materials (plus VAT at 20% of £90.00) with a deduction of £36.00 for the Construction Industry Scheme (CIS). Mr Phillips indicated that replacing the guttering was carried out to a commercial rather than a domestic standard and he averred that £504.00 was well within the broad range of reasonable prices for such work. He added that the Applicants had not provided any evidence as to the amount they considered to be reasonable for this work. Accordingly, Mr Phillips stated that the Respondent denied that the cost of removing and replacing this section of guttering was unreasonable.

(vii) Grounds maintenance - £1,130.00

The Applicants opined that the charges raised for grounds maintenance by MetroPM were excessive when account is taken of the quality of the work undertaken and the intermittent basis on which it was carried out. In this respect, the Applicants submitted a series of undated photographs which, in their opinion, showed the unkempt state of the grounds at the subject property. They added that this was the position when the RTM took over the management of the subject property – trees were overgrown and had not received any attention for a long time, debris was scattered over the area from the previous Autumn, fences were broken, and roots, which had entered the drainage system, required attention.

The Applicants informed the Tribunal that the RTM had consulted tree surgeons, Chapel Farm, and, as a result, the RTM was satisfied that work was needed in order to prevent further problems. An invoice dated 12 September 2017 from Chapel Farm for £900.00 relating to work carried in respect of several trees at the subject property was adduced in evidence. In addition, the Applicants presented a retrospective report from Chapel Farm dated 11 August 2018 which built upon the brief description of the works in the invoice by setting out Chapel Farm's conclusions on inspecting the subject property. These conclusions were that trees had not been given proper pruning and could not be brought back to a usable condition, the conifer hedge could not be saved and would not be viable for use a hedge because of its poor condition, there was indisputable evidence of ground disturbance and, in particular, areas 'where water systems were under foot', the front tree and several other trees to the left of the subject property were overhanging and touching the building and this was diminishing the light available to the residents, and there was considerable impact on the neighbour's property, especially from the side conifers. With regard to the latter, the Applicants submitted an undated letter in which the neighbour,

Mrs Hilary Curley, alluded to difficulties which she had experienced with the conifer trees and indicated that she was pleased when the trees were 'completely removed.'

The Applicants also informed the Tribunal that the RTM had engaged gardeners on two occasions to carry out necessary garden maintenance including work on an overgrown bush which encroached, badly, on the driveway. This work cost, in total, £230.00. The Applicants presented two invoices from P.M. Garden Maintenance dated 1 July 2017 and 10 August 2017 for £150.00 and £80.00 respectively. Further, the Applicants indicated that a drainage problem had been investigated for which an invoice from DB Drainage Solutions Ltd dated 18 January 2018 for £120.00 had been received and paid by the RTM. The Applicants adduced this invoice in evidence.

The Respondent stated that grounds maintenance at the subject property had been undertaken by Forest Hill Landscaping Ltd ('Forest Hill') in accordance with a contract specification (a copy of which had been adduced in evidence) that provided for basic grounds maintenance at £140 (plus VAT) per month. This involved two monthly visits between March and October (Summer visits) and one monthly visit in November-February (Winter visit). Such maintenance was described in the specification. It comprised work relating to grass, shrubs, beds and borders, hedges, and paths, roadways and parking areas during the Summer visits, and, save for work on the grass, similar activities during the Winter visit. Provision was also made for leaf collection during the Winter visit. The specification also provided for the carrying out of additional activities 'subject to separate order instructions.' The Respondent noted that the grounds are 'quite large for a small block'; a feature which Mr Phillips described as the larger than average garden at the block. In his submissions, Mr Phillips averred that, taking into account the afore-mentioned size of the grounds, the cost £140.00(+ VAT) per month for the services provided by Forest Hill was not unreasonable. Moreover, he contended that little weight should be attributed to the 'expert' evidence provided by the Applicants. This was a retrospective report prepared by a company that undertook works in 2017. He concluded that the recollections of such a financially interested party in relation to works carried out 11 months previously are of no probative value. Further, the Applicants' claim was misconceived because it related to the above expenditure of £1,250.00 which had been incurred by the RTM. In these circumstances, Mr Phillips submitted that the Applicants' claim in this regard must fail.

Additional Issues

(viii) Electrical intake cupboard - £915.99

The Applicants informed the Tribunal that a wiring condition report had been provided by Moseley and Son's Electrical and Property Maintenance Limited on 12 July 2017 which led to the provision of an unsatisfactory certificate of works together with a quotation for work that was required to achieve a satisfactory condition. The Applicants indicated that various remedial works were completed including the replacement of an interior 'Sapele door' with a 1-hour rated fire door and the installation of a new distribution board. Invoices for the works that were undertaken were adduced in evidence. A NICEIC electrical installation certificate, which was also adduced in evidence, was granted on 18 September 2017. The Applicants added that, prior to the carrying out of these works, British Gas had been unable to carry out metering work because the installation was regarded as potentially dangerous to work on as shown by a Notice of a Potentially Dangerous Situation, which was adduced in evidence, issued by British Gas on 18 June 2017. Further, Mr Thomas had been unable to secure SMART meter installation by British Gas because of the potential dangers.

The Applicants also indicated that the RTM had asked MetroPM to provide electrical certificates, but none had been forthcoming. Finally, the Applicants referred to an audit

of the safety of the subject property, which had been conducted by Quantum Compliance, but did not include looking into the electrical intake cupboard. This audit was not scrutinised by MetroPM. By way of conclusion, the Applicants inferred that, in the absence of certification, no further electrical checks were undertaken.

The Applicants sought repayment of the specified sum.

The Respondent referred to the last EICR survey for the subject property, which was undertaken in 2011, and informed the Tribunal that any required remedial work had been completed thereafter. It also informed the Tribunal that the health and safety survey (see above, paragraph 19(ii)) and a fire risk assessment also conducted by Quantum Compliance on 9 December 2015, which was adduced in evidence, did not highlight issues with the electrical intake cupboard and confirmed that the cupboard door was compliant with current fire standards.

Mr Phillips stated that it was unclear on what basis the Applicants sought 'repayment' of this sum which related to expenditure that had been incurred by the RTM. The service charge accounts prepared prior to the RTM taking over responsibility for the management of the subject property do not include a charge in relation to the electrical intake cupboard. In these circumstances, Mr Phillips submitted that the Tribunal did not have power to make an award in respect of this sum under section 27A of the 1985 Act, and that, accordingly, the Applicants' claim in respect of this sum must fail.

(ix) MetroPM roof works supervision fee - £181.00

The Applicants contended that MetroPM did not conduct this supervision very well. The refurbishment work was carried out on the wrong roof and MetroPM failed to check that this work was completed to a satisfactory standard before signing it off. The Applicants stated that there are a minimum of 13 tiles on the refurbished roof of which MetroPM were notified but failed to address. Further, MetroPM failed to obtain a guarantee as part of the original quotation. The Applicants informed the Tribunal that the RTM had approached Integral for a copy of the guarantee for the roof works that were carried out.

The Respondent indicated that this fee was charged by its managing agent, MetroPM, for supervising work relating to works which had been carried out on the roof of the subject property. The work involved 'meeting contractors on site, preparing specifications, serving the statutory notices and managing the works.' The fee comprised 10% of the final invoiced amount for the work submitted by Integral. Further, the Respondent stated that, notwithstanding the Applicants' claim to the contrary, the work had been carried out on the correct area of the roof and opined that such work had been completed to a high standard. The Respondent denied that broken tiles had been left on the subject property following completion of the works.

Mr Phillips submitted that the roof works had to be supervised and that the supervision fee that was charged at the contractual rate of 10% was, in view of the work required, reasonable. He added that the Applicants had not challenged the cost of the works carried out on the roof which must, therefore, be deemed to be reasonable. As a consequence, the supervision fee must be reasonable as it is related to that cost. Accordingly, the Applicants' challenge to this fee must fail.

(x) Unpaid bills - £987.47

The Applicants explained that this sum related to bills submitted for £791.47 and £196.00 by Integral and Forest Hill respectively. Each of the bills was adduced in evidence – the former was dated 20 November 2017 and the latter was dated 31 May 2017. The Applicants submitted that Integral's bill concerned works that were carried out

before the RTM took over the management of the subject property, and it was, therefore, wrongly attributed to the RTM. In the Applicants' opinion, this outstanding sum should have been cleared by MetroPM before the handover to the RTM. Similarly, the Applicants submitted that Forest Hill's bill should have been settled by MetroPM before the handover to the RTM.

The Respondent informed the Tribunal that the sum of £791.47, which was sought by Integral, comprised the total of five amounts relating to the CIS and that it was notified of this liability after the management of the subject property had been transferred to the RTM. Consequently, the Respondent advised Integral to approach the RTM for payment. The Respondent confirmed that these amounts were shown as credits on the original invoices submitted by Integral for work done, which were adduced in evidence, and, therefore, they were not due to be paid when those invoices were presented for payment.

Further, the Respondent indicated that the invoice from Forest Hill for £196.00 was received, similarly, after responsibility for the management of the subject property had been transferred to the RTM. The Respondent confirmed that the grounds maintenance to which this invoice related had been carried out in accordance with the specification and this sum was, therefore, payable.

Mr Phillips added that it was not open to the Tribunal to grant the remedy sought by the Applicants in relation to these 'unpaid bills' under section 27A of the 1985 Act. He also noted that the Applicants had not questioned the reasonableness of the sums claimed in these bills. Accordingly, the Applicants' claims in respect of these bills must fail.

20 In concluding remarks, Mr Taylor and Mr Thomas stated that it was difficult to understand the absence of funds to undertake various works and that the manner in which the service charge had been managed had caused upset and stress to leaseholders. The Applicants were looking for fairness in the resolution of the issues which had been raised. Mr Taylor and Mr Thomas also observed that the RTM had spent money on matters that should have been dealt with by MetroPM during its period of management and that expenditure had been incurred with a view to ensuring the safety of Wedgewood Court, compliance with legal requirements and maintaining the value of the flats. In his summing up, Mr Phillips emphasised his principal submission, namely that many of the issues raised by the Applicants did not fall within the jurisdiction of the Tribunal. It was obliged under section 27A of the 1985 Act only to consider costs incurred by the Respondent, not those incurred by the RTM, and to determine whether those costs were reasonably incurred and reasonable in amount.

Determination

21 In making its determinations, the Tribunal considered, carefully, the oral and written evidence presented by the parties, including the leases of each of the flats and the final statement of account to 5 June 2017 which had been provided, at the request of the Tribunal, by the Applicants and the Respondent respectively.

Substantive issues

22 The Tribunal considered and determined the issues raised by the Applicants in the order in which the evidence submitted by the parties was presented to the Tribunal. In this regard, the Tribunal, in view of the position adopted by the Respondent at the Hearing in relation to the solicitor's fees, differentiates between those fees and the other issues raised. In the former respect, the Tribunal acknowledges and records that the Respondent accepts that the solicitor's fees cannot be recovered through the service charge and makes a corresponding determination to this effect. However, the Tribunal

has no power to order reimbursement of sums reflective of those fees which were attributed to the service charge accounts of the leaseholders of Flats 3, 5 and 6.

23 As to the other contested issues, the Tribunal is guided by the relevant law relating to the payability and reasonableness of service charges. The above-cited sections 18, 19 and 27A of the 1985 Act (see, paragraphs 12 and 13) contain important statutory provisions relating to the recovery of service charges in residential leases. In the ordinary course of events, payment of these charges is governed by the terms of the lease which sets out the agreement that has been entered into by the parties to the lease. However, these provisions in the 1985 Act provide additional protection to the leaseholders in this instance, broadly, through the application of the test of 'reasonableness'.

24 In these respects, the construction of the lease is a matter of law and the 'reasonableness' of the service charge for the purposes of the 1985 Act is a matter of fact. It is accepted that there is no presumption either way in deciding the 'reasonableness' of a service charge. If a leaseholder provides evidence which establishes a *prima facie* case for a challenge, the onus is on the landlord to counter that evidence. Consequently, a decision is reached on the strength of the arguments made by the parties. Essentially, a Tribunal decides 'reasonableness' on the evidence which has been presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2 EGLR 100).

25 With regard to the test of establishing whether the cost was reasonably incurred, the usual starting point is the Lands Tribunal decision in *Forcelux Limited v Sweetman* [2001] 2 EGLR 173, which concerned recovery of insurance premiums through a service charge, in which Mr PR Francis FRICS said:

"[39]...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

[40] But to answer that question, there are in my judgment, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market."

26 Subsequently, in the Lands Tribunal decision in *Veena v Cheong* [2003] 1 EGLR 175, Mr PH Clarke FRICS observed:

"[103]...The question is not solely whether costs are 'reasonable' but whether they are 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

27 Recently, the Court of Appeal analysed the concept of 'reasonably incurred' in section 19(1) of the 1985 Act in *The London Borough of Hounslow v Waaler* [2017] EWCA Civ 45 in the course of considering whether the cost of replacing windows by Hounslow was reasonable where those windows could have been repaired at a cost that was substantially less than the cost of replacing the windows. The court said that in applying the test of establishing whether a cost was reasonably incurred the landlord's decision making process is not 'the only touchstone'. A landlord must do more than act rationally in making decisions, otherwise section 19 would serve no useful purpose. It is particularly important that the outcome of the decision making process is considered. As HHJ Stuart

Bridge said in the later Upper Tribunal decision in *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC):

"[47] If, in determining whether a cost has been 'reasonably incurred', a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in *Waaler*. I agree with the Court of Appeal that this cannot be the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in *Forcelux*, necessarily a two-stage test.

[48] Context is, as always, everything, and every decision will be based upon its own facts…"

28 In approaching the question of the 'reasonableness' of the contested costs in this case, the Tribunal is also mindful of the Upper Tribunal decision in *Regent Management Limited v Jones* [2010] UKUT 369 (LC), and, in particular, to the following cautionary words of HHJ Mole QC:

"[35] The test is whether the service charge that was made was a reasonable one; not whether there are other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem…All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT *[the Tribunal]* may have its own view. If the choice had been left to the LVT *[the Tribunal]*, it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable."

29 In light of sections 18, 19 and 27A of the 1985 Act and this judicial guidance on the interpretation and operation of those provisions, the Tribunal's discussion and findings in respect of each of the contested issues follow.

Driveway resurfacing

30 The cost of this resurfacing, namely £4,836.00 (including VAT), was incurred by the Respondent in accordance with its obligation in the lease to maintain, repair and renew the driveway. It was accepted by the parties that resurfacing of the driveway was necessary. During its inspection, the Tribunal gleaned some insight into the pre-existing condition of that part of the driveway which was resurfaced from observing the other sections of the driveway which have not been resurfaced.

It is the reasonableness of this figure which falls for consideration under section 27A of the 1985 Act. It was not readily apparent to the Tribunal on what basis the Applicants sought to challenge the sum of £7,136.00 in respect of driveway resurfacing.

In its deliberations relating to the reasonableness of the actual cost incurred by the Respondent in resurfacing part of the driveway, the Tribunal took cognisance of all evidence submitted by the parties, but had regard, in particular, to the following.

First, the Tribunal noted that the Applicants had not taken the opportunity afforded to them during the section 20 consultation relating to the resurfacing to nominate a contractor or contractors who might be approached for a quotation for the proposed work. The failure to do so is not justified by their perception that such nomination would

not have been welcomed by the Respondent. In the event of a nomination, the Respondent would have been obliged to consider that nomination in accordance with the statutory requirements of the consultation process.

Secondly, the absence of a nomination at the appropriate time brings into question the legitimacy and relevance of the quotation submitted at the request of the RTM by Compass Surfacing in June 2017 save to the extent that it purports to provide an after the event alternative costing for the resurfaced area. In this respect, it falls short. The quotation lacks sufficient precision as to the nature of the works and related matters which would have been covered by the alternative costing of £2,250.00 (plus VAT) or of the factors which informed that costing in contradistinction to the specifics associated with the resurfacing project that was actually undertaken. In this circumstance, the Tribunal attributes little evidential weight to this quotation.

Thirdly, the Tribunal discounts the Applicant's contention that the wrong area of the driveway was resurfaced. The determination of the area of the driveway to be resurfaced is a matter for the Respondent and the Tribunal finds that, in this instance, the Respondent's decision as to which area of the driveway should be resurfaced was made on rational and pragmatic grounds.

Fourthly, the Tribunal addressed the Applicants' submission and supporting evidence that the resurfacing was sub-standard in quality and did not justify the payment of the sum of £4,836.00. In this respect, it was clear to the Tribunal from its inspection that the resurfacing had not been completed to the highest of standards. However, the test is whether the work was completed to a reasonable standard, and, in this regard, the Tribunal relying on its knowledge and experience as an expert Tribunal determines that the resurfacing was completed to a reasonable standard, especially when viewed in juxtaposition with the cost incurred by the Respondent which corresponded with the lower of the two quotations received during the section 20 consultation.

In conclusion, the Tribunal finds that the cost incurred by the Respondent of £4,836.00 (including VAT) was reasonably incurred and reasonable in amount.

Stop taps

31 The Tribunal notes that the parties accepted that work was required in relation to the stop taps the nature of which was expressed in the case of the Respondent in the notice of intention to carry out work dated 19 February 2016. The Applicants alleged that monies had been collected by MetroPM to enable this work to be carried out, and submitted that as the work had not been carried out such monies should be reimbursed, whilst the Respondent indicated that because such works had not been carried out no such monies had been collected through the service charge and added that all monies received and expended during the relevant period were properly accounted for in the service charge accounts. The Tribunal notes that the only specific reference to the stop taps in those accounts relates to expenditure of £288.00 incurred to 'attend issue and file report on stop taps' which is clearly distinguishable from the work proposed in the notice of intention to carry out work. The final service cost account makes no reference to expenditure on the stop taps. The final service cost account also shows that a contribution was made to the reserve fund which was carried forward to the final service cost account but the source(s) of that contribution is/are not identified.

Be that as it may, the jurisdiction of the Tribunal under section 27A of the 1985 Act in the context of this case relates to whether relevant costs have been reasonably incurred and whether those costs are reasonable in amount. In this instance, it is established that no pertinent work has been carried out on the stop taps; a fact which was evident to the Tribunal during its inspection. Consequently, no expenditure which might be regarded as

reasonably incurred and reasonable in amount had been incurred. Consequently, there are no costs in respect of which the Tribunal can exercise its jurisdiction under section 27A of the 1985 Act.

Landing window

32 Broadly, the submissions of the parties mirrored those pertaining to the stop taps. There was no apparent disagreement between the parties that the condition of this window warranted its replacement. The Applicants alleged that monies had been collected by MetroPM to fund the replacement of the window. This had not been done during MetroPM's management of the subject property. In the Application, the Applicants sought reimbursement of those monies (identified as £630.00), but, subsequently, reduced this claim to £500.00 in its further statement to reflect expenditure incurred by the RTM in replacing the window. The Respondent countered that as the work on the landing window had not been carried out no monies had been collected through the service charge and reiterated that all monies received and expended had been properly accounted for in the service charge accounts. The Tribunal notes, as might be expected in view of the expenditure incurred by the RTM, that there is no reference to expenditure on the landing window in either the service charge accounts or the final service cost account. The Tribunal's observation in relation to the stop taps about the contribution to the reserve fund applies, similarly, to the landing window.

Again, be that as it may, the Tribunal's jurisdiction under section 27A of the 1985 Act relates to whether relevant costs have been reasonably incurred and whether those costs are reasonable in amount. It is established that whilst MetroPM was acting as managing agent for the Respondent the landing window was not replaced and, consequently, no relevant costs were incurred by the Respondent. Therefore, there are no costs in respect of which the Tribunal can exercise its jurisdiction under section 27A of the 1985 Act. The expenditure by the RTM on replacing the landing window was incurred in the exercise of *its* management function. The Tribunal determines that it has no power to order the reimbursement of that expenditure by either MetroPM or the Respondent.

MetroPM surfacing supervision fee

33 As indicated in the consideration of the driveway resurfacing (see, paragraph 30), both parties accepted that resurfacing was necessary. With regard to the related supervision fee, the Applicants did not challenge the payment of a fee which the Respondent stated was contractually agreed nor did the Applicants question the basis upon the fee was calculated as 10% of the final invoiced amount for the work. Rather, the Applicants' claim for reimbursement of this fee was founded on the objections which they had raised in relation to the carrying out of the resurfacing, namely that the wrong area of the driveway had been resurfaced and it was sub-standard in quality. As the Tribunal intimated in its examination of the evidence relating to the cost of the driveway resurfacing, neither of these objections were well founded. From the Tribunal's ensuing determination that the cost incurred by the Respondent for the driveway resurfacing was reasonable, it follows that, without more, MetroPM's fee for supervising that work was reasonable in amount and the Tribunal so finds.

Gutter repair

34 The parties accepted that this repair, which involved the removing and replacing of a small section of guttering and for which the Respondent took responsibility under the terms of the lease, was needed. The Tribunal's inspection revealed dampness in the exterior wall directly below the 'new' white guttering (which was clearly distinguishable from the black guttering to which it was attached) which suggested that the 'old' guttering had been leaking and, consequently, that whilst the repair was not an emergency, it was

required. In these circumstances, the Tribunal finds that the related cost was reasonably incurred.

There was, however, a divergence of opinion between the parties as to the reasonableness of the sum charged which the Applicants described, in view of the nature of the work and the time which was taken by the contractors to complete it, as excessive and unreasonable and which the Respondent regarded as being within the broad range of reasonable prices for such work. The parties did not present independent evidence in support of their respective positions, and the Applicants, in particular, did not indicate what, in their opinion, might be regarded as a reasonable alternative sum for the work that was undertaken. In these circumstances, the Tribunal, whilst acknowledging that the cost of the material may have been at the limit of what might reasonably be expected, relies on its knowledge and experience as an expert tribunal and finds that the cost of carrying out this repair was reasonably incurred and reasonable in amount.

Grounds maintenance

35 The Applicants' submissions relating to grounds maintenance focused on, first, the reasonableness of the costs incurred by the Respondent in furtherance of its obligation under the lease for the maintenance of the garden at the subject property for the relevant period, namely £2,160.00 (including VAT) per annum payable to Forest Hill which the Applicants regarded as excessive, and, secondly, on expenditure sanctioned and incurred by the RTM amounting, in total, to £1,250.00 and relating to those works outlined in the Applicants' evidence (see above, paragraph 19(vii)) for which reimbursement was sought.

The determination of the reasonableness, or otherwise, under section 27A of the 1985 Act of the grounds maintenance costs incurred by the Respondent during the relevant period must take into account the terms of the contract in accordance with which the garden maintenance was undertaken and the standard to which the services provided for in the contract were performed. The specification of the works undertaken by Forest Hill provides for the carrying out of a somewhat limited range of activities by way of maintenance with additional activities to be subject to separate instruction and by implication discrete costing. It appears to the Tribunal from the evidence that the parties' respective expectations as to the work entailed in garden maintenance differed markedly. This is particularly evident from the nature of the work commissioned and paid for by the RTM, which in a number of respects, for example, significant work on the trees was not envisaged in Forest Hill's specification. Regardless of this apparent disparity, the Tribunal is charged with making a determination under section 27A of the 1985 Act on the reasonableness of the costs incurred by the Respondent not those incurred by the RTM, principally, in reliance upon Chapel Farm's report, which for the reasons given by the Respondent cannot in any event be considered to be independent and compelling evidence and which, in view of the matters upon which it concentrates, has only tangential relevance to the Tribunal's determination.

With regard to those costs incurred by the Respondent, it is not possible, with the passage of time and the nature of the work undertaken, for the Tribunal to be definitive about whether Forest Hill performed its duties to a reasonable standard during the relevant period. However, the position adopted by the Applicants emphasised matters which did not fall within the responsibilities of Forest Hill and, in the Tribunal's opinion, the Applicants did not adduce sufficient and compelling evidence to persuade it that, on the balance of probabilities, Forest Hill performed its services, generally, to other than a reasonable standard. Further, the Tribunal relying on its own knowledge and experience as an expert Tribunal finds that bearing in mind the responsibilities of Forest Hill outlined in the contract specification and the area for which it had responsibility the cost incurred by the Respondent for those services, namely £2,160.00 (including VAT) was

not unreasonable. Accordingly, the Tribunal concludes that these garden maintenance costs incurred by the Respondent were reasonably incurred and reasonable in amount.

As to the RTM's expenditure, the Tribunal's approach in relation to each of the specified items of expenditure which it incurred follows the approach which it adopted in relation to the expenditure by the RTM in replacing the landing window. Hence, as with that expenditure, the question of whether this expenditure by the RTM, which was also incurred in its management of the subject property, on matters which the Applicants regarded as pertaining to garden maintenance should have been incurred whilst MetroPM was acting as managing agent for the Respondent is not one for the Tribunal. Moreover, as with the expenditure by the RTM on the landing window, this is not expenditure which falls within its remit under section 27A of the 1985 Act, and the Tribunal determines that it has no power to order reimbursement either by MetroPM or the Respondent of all or any of the costs incurred by the RTM under this head i.e. those amounting to the previously cited £1,250.00.

Electrical intake cupboard

36 This is another instance of expenditure incurred by the RTM in exercise of *its* management function. There is a reference in the service charge accounts to expenditure incurred in 2015 (£270.00) relating to the carrying out of fire stopping to the electrical intake cupboard, but this is obviously distinct from the expenditure to which the Applicants allude. Other than this instance, there is no evidence of expenditure by the Respondent on the electrical intake cupboard during the relevant period. In the absence of such expenditure, there are no costs in respect of which the Tribunal can exercise its jurisdiction under section 27A of the 1985 Act.

In making its determination about this expenditure by the RTM, the Tribunal follows the approach which it adopted in considering the expenditure incurred by the RTM in relation to the landing window and garden maintenance and reaches the same conclusion. As a result, as with that other expenditure incurred by the RTM, the Tribunal finds that the question of whether the expenditure on the electrical intake cupboard should have been incurred whilst MetroPM was acting as managing agent for the Respondent is not one for the Tribunal. Further, again as with that other expenditure, the Tribunal determines that it has no power to order the reimbursement of all or any of this expenditure by the RTM either by MetroPM or the Respondent.

MetroPM roof works supervision fee

37 The parties' principal submissions resembled the submissions presented in relation to MetroPM's driveway supervision fee. Thus, both parties accepted that roof works were necessary, whilst the Applicants did not challenge the payment of a supervision fee which the Respondent stated was contractually agreed nor did they question the basis upon which it was calculated, namely 10% of the final invoiced amount for the work. The evidence shows that various works were carried out on the roof, namely a refurbishment of part of the roof and fascia and guttering works, although much of the evidence that was presented related to the refurbishment, for example, the Applicants' reference to the part of the roof on which the refurbishment was carried out (although, ultimately as with the driveway, this is a matter for the Respondent) and the absence of a guarantee for that work. However, in neither instance did the Applicants contend that the amounts charged for these works were unreasonable. Instead, The Applicants focused on what they regarded as poor supervision of the works by MetroPM. In this respect, the Tribunal was not persuaded that the instances cited of perceived shortcomings of that supervision, and there were some shortcomings, were sufficient in themselves to lead to the conclusion that MetroPM's overall supervision of the roof works fell below the standard that might

reasonably be expected. Accordingly, the Tribunal finds that the supervision fee for the roof works was reasonably incurred and was reasonable in amount.

Unpaid bills

38 It is clear that the invoices presented by Integral and Forest Hill are associated with the period during which MetroPM managed the subject property – the former relating to various amounts falling due under the CIS scheme which had been expressly excluded from earlier invoices sent by Integral to MetroPM and the latter covering the cost of work carried out by Forest Hill verified by MetroPM as having been carried out in accordance with the contract specification. Moreover, the parties accept that these invoices should be met, but disagree about where the responsibility for making payment lies. The scope of the Tribunal's jurisdiction under section 27A of the 1985 Act has been set out earlier in this decision. It does not encompass the resolution of this dispute. It might reasonably be expected that consideration would have been given to the settlement of such expectant liabilities at the time when management of the subject property passed from MetroPM to the RTM.

Costs – section 20C

39 The Applicants also sought an order of the Tribunal under section 20C of the 1985 Act by virtue of which all or any of the costs incurred by the Respondent in connection with the proceedings before the Tribunal shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. This was resisted by the Respondent.

40 The wording of section 20C makes it clear that the making of an order by the Tribunal under that section is a matter of discretion. It is a discretion which may be exercised having regard to what is just and equitable in all the circumstances of the particular case.

41 Guidance on the exercise of that discretion was given in *Tenants of Langford Court v Doren Limited* (LRX/37/2000). In that case, HHJ Rich said:

"In my judgment the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.

…there is no automatic expectation of an order under section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct.

In my judgment the primary consideration that the LVT *[the Tribunal]* should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust…its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

42 Further guidance is given in the Upper Tribunal decision in *Conway and Others v Jam Factory Freehold Limited* [2013] UKUT 0592 in which Martin Rodger QC observed that it is important to consider the overall financial consequences of making an order under section 20C, and, in particular, that an order made under the section will only affect those persons specified. He also said:

"[75] In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."

43 As this judicial guidance makes clear, a Tribunal should not in deciding whether or not to exercise its discretion under section 20C stray from the principle which underlies the exercise of that discretion, namely whether it is just and equitable in all the circumstances of the case to do so.

44 In considering whether to exercise its discretion under section 20C in this case, the Tribunal took into account all the prevailing circumstances, but, particularly, the following.

At the outset, the Tribunal reviewed the background to the making of the Application namely, the transfer of the management of the subject property from the managing agent, MetroPM, to the RTM; a process which in the Tribunal's experience can often give rise to subsequent disputes. In this case, both parties co-operated with the Tribunal with a view to resolving the disputes which had arisen, notably in the provision of the further documentation requested by the Tribunal following the Hearing and, significantly, on the part of the Respondent its willingness at the Hearing to proceed with *all* the issues that were raised by the Applicants. The Tribunal also took into account the fact that a number of the issues raised by the Applicants did not fall within its remit under section 27A of the 1985 Act.
In addition and in accordance with the above judicial guidance, the Tribunal acknowledged that the outcome of this case, which was predominantly in favour of the Respondent save in respect of the solicitor's fees, whilst relevant was not determinative of the question of whether or not it should exercise its discretion under section 20C.

The Tribunal was not provided with any evidence relating to the specific financial consequences of the making of an order under section 20C for either party.

In the light of all the circumstances and in line with the backdrop to the issues addressed and determined in this case, the Tribunal finds that it is not just and equitable to make an order under section 20C. However, it should be noted that this is not a determination relating to the amount of the Respondent's costs or any part thereof and is, therefore, without prejudice to any subsequent application by the Applicants which seeks to challenge such costs on the ground that they are considered to be unreasonable.

Judge David R Salter

Date: 19 March 2019

Appeal Provisions

45 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

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

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