FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2020/0123**
HMCTS CODE	**:**	**V:CVP Remote**
Property	**:**	**Orwell Studios, Market Place, London W1W 8AL**
Applicant	**:**	**Ten residential long leaseholders named in the schedule to the application**
Representative	**:**	**Mr Justin Bates, Counsel instructed by Northover Litigation**
Respondent	**:**	**Redevco UK2BV**
Representative	**:**	**Mr Daniel Dovar, Counsel instructed by Osborne Clarke LLP**
Type of Application	**:**	**For a determination of a liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr A Harris LLM FRICS FCIArb** **Mr O N Miller BSc**
Date and venue of Hearing	**:**	**Remote Video Hearing on 22nd to 26th February 2021**
Date of Decision	**:**	**27 April 2021**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVP Remote. A face-to-face hearing was not held because it was not practicable given the Covid-19 pandemic.

The documents that we were referred to were in two bundles totalling over 4,000 pages, the contents of which, insofar as they were relevant, we have noted. This decision should be read in conjunction with the attached Scott Schedule.

DECISIONS OF THE TRIBUNAL

1. The Tribunal makes the determination set out under the various headings below and as set out on the attached Scott Schedule.
2. The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
3. The tribunal makes no order for the reimbursement of fees.

BACKGROUND

1. This is an application made by ten of the eleven leaseholders at the property Orwell Studios, Market Place, London W1W 8AL (the Property). The Respondent to this application is their landlord, Redevco UK2BV. The Property is mixed use in central London comprising commercial retail units at the sub-basement, basement, ground floor, first and second floors of the Property with offices at the third floor. The residential apartments are to be found on the fourth, fourth mezzanine and fifth floors. The Property sits between Oxford Street and Market Place, the retail outlets having their frontages to Oxford Street and the offices and residential properties having their separate entrances in Market Street.

2. The leases, which we were told, are in common format are for a term of 125 years from 1st January 2006. The leases provide for the residential leaseholders to pay a service charge, for amongst other matters, the repairs and maintenance of the building, the amount to be paid being a proportionate part to be determined by the management agents and payable as an interim and further interim charge with an end of year balancing provision. Any shortfall is to be paid within 28 days of the provision of a certificate. We shall refer to such other elements of the lease as are relevant during the course of this decision.

3. The apportionment of service charges is dealt with by reference to four different cost headings referred to as Schedules 1 to 4. We will return to this element in due course as the schedule allocation was set out to in a joint experts report which has confirmed the majority of the apportionment points, leaving only the question of the lift costs apportionment for us to deal with.

4. Originally this application was due to be heard with an appointment of manager claim under section 24 of the Landlord and Tenant Act 1987. At that time, the Applicants had proposed Mr Tony Hymers a director of Burlington Estates

(London) Limited as their manager. However, in a change of ship, Mr Hymers/Burlington has now been brought on board by the Respondents, as its managing agents from 15 May 2020. The section 24 application has been stayed pending the outcome of this service charge dispute.

5. We should mention in passing that there are some applications pending for dispensation in respect of alleged breaches of non-consultation, which we will address during the course of this decision.

6. The application before us deals with the service charge years 2014 to 2020 set out on the detailed Scott Schedule which we have completed and which is annexed hereto.

7. In helpful skeleton arguments produced by Mr Bates for the Applicant and Mr Dovar for the Respondents, the matters that we were required to consider were set out. Briefly there were as follows:

- Apportionment, largely dealt with by the expert's report but there is still the question of the apportionment of lift costs to be dealt with. There are two lifts at the Property, one exclusively used by the residential leaseholders and the second serving only floors 1 to 3 which are the commercial and office floors, although the leaseholders do have the use of this lift on an unlimited basis.

- The second element that we are required to consider was the end of year certificates. It is we believe common ground that there has been a surplus in each year and that the lack of certification has, so the Respondent would say, no particular bearing on the case.

- There is a specific section 20B point relating to an Otis invoice, which was dated 1st April 2014 but not paid until February of 2017.

- The fees of Fresson and Tee Limited (F&T) are disputed. These fall into three brackets, the first is whether or not their employment was a qualifying long term agreement (QLTA) for which there was no consultation. The second is that the fees were increased in one year by the RPI increase during the totality of the period of employment by F&T rather multiple years-worth of increases. It is contended by the leaseholders that accumulative uplift is not payable. Finally, there is dispute as to the standard of service provided.

- Mayfair Facilities Management (MFM) is a company whose role appears to be the provision of a building manager(Mr Goth). The Applicants say there has been no tendering process so far as the involvement of Mayfair is concerned and it is unclear why Mayfair is providing a building manager when there are already managing agents. There is also a general complaint as to the standard of service provided by Mayfair through Mr Karl Goth.

- There is a challenge to VAT, which we will return to.

- There is a challenge to the involvement of Polyteck Building Services who provided mechanical and electrical support. It appears that they were

engaged for the years ending 2016 to 2019 and there are it is said by the Respondent only three specific challenges to light fittings, a roof defect and booster pumps in respect of the water supply to the residential apartments.

- There is a challenge to the electricity although it is conceded by the Respondents that this was not recoverable under the lease as a service charge.

- The Scott Schedule items are numerous and we will deal with those on an item-by-item basis in our decision and in completing the Scott Schedule.

8. Prior to the hearing we were provided with two bundles, one the hearing bundle whose index ran to some 1,506 pages and contained the application with grounds, the parties' statements of case and a tenant's reply, the Scott Schedules, orders issued by the Tribunal, a number of witness statements, service charge accounts and expenditure reports, a copy of Flat 1 Orwell Studios lease and that of the transformer chamber, basement and ground floor, basement to second floors and third floors. In addition, there were photographs of the buildings taken by the landlord and by the tenants and documentation relating to the section 24 application that we were not required to deal with.

9. The second bundle contained various documentation, such as invoices for each year in dispute, reports and contracts. This bundle ran to some 2510 pages. For certain one element that this case was not short of was paper.

10. Subsequent to the hearing at the request of the Applicants, we viewed two videos which had been taken we understand by Mr Goth, showing us the common parts of the building from the basement to the roof level. We are grateful to Mr Goth for the time spent in producing these videos, which we have studied.

JOINT EXPERTS REPORT

11. The parties had agreed that a report should be prepared on the question of apportionment. Mr Thomas Hutchinson FRICS ACIArb and Mr Peter Forrester FRICS had met and had produced a report which was before us and was made in early February of this year. The report sets out the introduction and the instructions given as well as the background and description of the Property.

12. It confirms at paragraph 14 that there are four schedules used for the determination of the service charges and pay ability. Those schedules are as follows:

- Schedule 1, which is the service charge apportioned to the residential flats in connection with the whole building of which the lessees paid 23.51%. Schedule 3 is the apportionments to the costs associated with the residential element and offices of which the lessees pay 66.05% of the cost.
- There is no dispute that Schedule 2 relates to the retail and offices as this does not involve the residential element and no dispute as to schedule 4, which is residential costs only.
- The report goes on to describe the Property and confirms that the residential lift is accessible by the leaseholders only but that they can have access to the

office lift. Presently under schedule 3. Both lifts are charged as 66.05% of the costs to the leaseholders.

- The leaseholders have contended that they should meet the totality of the costs of one lift and the offices the cost of the other. Alternatively, it was suggested that the costs of the lift should be divided on a 50:50 basis.

13. In their joint statement the experts agreed the following:

- That it is appropriate to use floor areas to apportion the service charges between the various elements of the building.
- It was agreed that the current apportionment between the four elements is satisfactory in the context of this building and further agreed that the method of apportionment was correct.
- Whilst the experts had not reviewed the elements of the service charges in detail there were no issues identified with the elements set out in the service charge statements, which were appended to their report and instructions.
- As to the apportionment of the lift, there was a dispute between the leaseholders and the landlord as to the extent of use and the benefit that the leaseholders have of the office lift. The experts agreed that if it is established that the leaseholders have the use of the office lift at all times, then the current service charge apportionment is correct, that is to say 66.05% to the leaseholders. However, Mr Forrester contended that the benefit to the leaseholders was limited in respect of the office lift as it only served the first and third floor whereas the flats were located on the fourth and fifth floors. On that basis the costs of both lifts should be apportioned on a 50:50 division.
- Mr Hutchinson on behalf of the Respondents contended that the present method of apportioning namely 66.05% was correct as the residents had use of the office lift at any time and were therefore able to take benefit of it not only when the lift to the residential floors was out of use but when it was in heavy use.
- On the question of insurance apportionment, the expects agreed there was no valid reason why the current method of charging is incorrect and should not continue. Their summary sets out the matters which they were agreed confirmed that it was only the question of the lift which had not resulted in a meeting of minds.

HEARING

14. The hearing commenced on 22nd February and Mr Bates made an opening indicating that there were two broad themes to the Applicants' concerns, namely the opaque layers of management and their collective failures. He told us that in his view there were at least three management layers with an uneasy interaction. The basis upon which Mayfair Facilities Manager (MFM) were involved was unclear. This appeared to be a trading company run by Laura Cissal, the widow of the previous building manager. There was, said Mr Bates, evidence that there were works undertaken by different people/companies, for example fire equipment and security. There seemed also to be some cross-pollination in connection with the cleaning services, undertaken by a company called Sparkle. He then made the point that neither MFM nor Sparkle appeared to have been retendered since they started in 2009 and 2008 respectively.

15. He challenged the appointment of F&T as managing agents. He said that they were appointed for a three-year period in 2008 and thereafter determinable on three months notice. but that the question we needed to consider was whether a QLTA. We were referred to a number of letters in that regard.

16. The question of electricity charges made by the Respondent was raised. It is common ground that there is no service charge provision for the cost of electricity to the individual flats. We were taken to a document in the bundle at pages 363 to 365 the latter containing a spreadsheet showing the electrical charges and how that had been dealt with. There appeared to be an interest element but we were told by Mr Dovar that interest was not charged and had been removed and that the schedule accurately reflected the position.

17. Mr Dovar made a brief response and took us to the statement of account for Mr El-Hadidi and his financial position in respect of Flat 2 Orwell Studios, which showed the electricity costs had been credited. He confirmed that most tenants were in credit after the electricity costs had been taken into account.

18. We have read the Grounds of the Application and the tenants' statement of case, the Landlord's statement of case and the tenants' reply. It was suggested that the Scott Schedule does not adhere to the terms of the directions in that there is uncertainty as to the items disputed and why they are disputed and that no indication has been shown as to what sum might be paid. It is suggested by Mr Dovar that this is a fishing expedition and he relied on the case of Enterprise Home Developments LLP v Adam [2020]UKUT151(LC) where it was confirmed that it was for the party disputing the reasonableness of a sum to establish a prima facie case, which is not established by asking for more information. The other matters referred to in the reply have largely been addressed in the opening paragraph of the decision.

19. We then heard from witnesses, the first for the Applicant being Miss Mears whose witness statement was to be found at pages 149 to 152 of the bundle. In her witness statement she said that she was the residential occupier of Flat 5 Orwell Studios, which was owned by her ex-husband. She said that she had lived at the building since 2006 and shared it with her daughter. She confirmed that she supported the Applicant's claim and did not wish to repeat matters contained in Mr El-Hadidi's witness statement. Her main concern in her statement related to rough sleepers who affected her use and enjoyment of the Property and also caused security issues. She told us of the times that the Police had attended and of the criminal activity, including apparently, a fatal stabbing in close vicinity to the Property.

20. She expressed her wish for the Property to have the benefit of a concierge service although she had been advised by F&T that that would not be possible. She shared the lessees' misgivings over MFM's role within the building, although confirmed she was not unhappy with that which was undertaken by Karl Goth as he knew the building and was always helpful. She asked that he could remain but whether he could be directly appointed and employed by the Respondent. She expressed concerns at the number of levels of management.

21. She was tendered for cross-examination by Mr Dovar and confirmed that her main concerns were the rough sleeping and the drug abuse in close proximity to the Property. She said that the rough sleeping problem was a daily issue and had been for many years, although had improved somewhat during the period of lockdown. Apparently one particular person had set up "residence" outside the building and although he would be moved on, he would return. She accepted that Mr Goth was not at the building throughout the day but perhaps visited three times but not at the weekends.

22. She was asked about the potential for the employment of a concierge. She was asked whether she recalled receiving a letter from Burlington Estates dated 3rd November 2020 at page 883 of the bundle, which she said she did but did not respond to the letter. She thought that the concierge could use the facilities on the third floor as apparently Urban Outfitters had vacated and that if there were a presence at the building there would be less likelihood of difficulties with rough sleepers. She did accept that there would be a cost for this. She thought, however, there was a need to streamline the management and to put in place a proper structure. In her view, if the money were better spent then there would be funds available to meet other expenses.

23. After Miss Mears had given her evidence we heard from Mr Hanei El-Hadidi. His statement ran from pages 153 to 703 of the bundle. This included a number of exhibits.

24. The lengthy witness statement confirmed that Mr El-Hadidi (HEH) is the leaseholder of Flat 2 and authorised to make the statement on behalf of the Applicants. He was one of the first residents. After outlining his knowledge of the building, although he erroneously referred to the Respondents as being the freeholders, he went on to set out his understanding as to how the Property had developed. He mentioned at paragraph 10 of his statement the problems in the early days with the lifts which resulted in those being changed so that the office users could not enter lifts which served the residential floors.

25. Under the heading "Background" he confirmed Mayfair's involvement and the approaches made by the leaseholders concerning various issues including rubbish and water ingress. In these early years it appears that HEH was the moving force in connection with contact with the Respondents and their managing agents.

26. This statement went on to tell us that in 2008 F&T were appointed to manage the building, although no copy of the contract was provided at the time nor has been since, save as produced in the course of these proceedings. He makes complaints about the works undertaken by F&T and the difficulties that the Property has suffered in respect of rubbish, rough sleepers, exorbitant costs for small jobs and incorrect electricity charging. His statement went on to address the apportionment issues as well as management fees and the subsequent employment of Burlington Estates. We have noted all that has been said in this regard.

27. His statement went on to address the question of the building manager and the relationship between MFM and the Respondent. No copy of MFM's contract has

been provided. Apparently, a request was made to the Respondent in 2019 to retender for Mayfair's services and an indicated was given that they would do so but so far as he was concerned this had not happened. A section on electricity charges is noted as is the heading Health and Safety where the question of fire alarms and automatic opening vents were addressed. There was an error in this regard in that the AOVs are of a decorative nature on the fourth floor and it is at the fifth floor that the AOV is to be found.

28. The question of commercial waste generated by the retail outlets was raised, as is the problem with rough sleepers.

29. Under the heading Major Works, concern was raised about the roof works which appear to have been undertaken following problems caused by decking supports. It was thought that these works may be covered by the Respondent's ten-year warranty but the insurers rejected the claim as it was caused by the design and installation of the decking boards and supports and not a defect in the waterproofing element. It was on this basis that the lessees did not consider it reasonable or indeed fair for them to make any payment for the costs of making good.

30. The statement went on to address the replacement of booster pumps and also works in connection with the vault, which we can say at this stage does not need to be aired as no costs associated therewith are being passed to the Applicants.

31. His statement then went on to deal with the mechanical and engineering contract and issues therewith. There was concern at the appointment of Polyteck and the crossover of works undertaken as well as the standard and the allegation that the directors of Polyteck were being investigated for certain criminal activities. A reference is made to Karson Consulting and whether or not they were employed on a QLTA, but this was not pursued by the Applicants at the hearing. Instead, the witness statement went on to address items as cleaning, lifts and the reserve fund. There were a number of pages, indeed from page 178 to page 703 in which there were photographs, documents and a copy of the lease.

32. In cross-examination he was asked about the use of the lifts and access thereto. He confirmed that on infrequent occasions, perhaps no more than twice a year, he would use the office lift if the residential lift was out of action. It was conceded that the office workers would have to take the stairs if their lift was not working. His view on the costings for this was that he should pay for one lift and that the other lift should be paid for by the commercial users.

33. It was put to him that the appointment of F&T was not out of the blue. He confirmed that he had been involved in the process of appointing F&T together with Mr Lanitis, although he himself had proposed Country Estate Management Limited. For his part he said he was content for the Respondents to remain managing the Property provided someone was assigned to the block. However, his view was that they needed a managing agent who would be able to deal with the residential units and not just the commercial. On the subject of F&T's involvement, it was put to him that he was fully aware of the terms of the contract and conceded that paragraph 17 of his witness statement was not correct in that he had seen the documents leading to their appointment, in particular their letter

dated 31st October 2007 which sets out F&T's terms. Whilst accepting that there were differences between F&T, MFM and the M&E Contractors, he was of the view that the lessees had to contact different people for different things.

34. When he asked for clarification of MFM's duties he agreed that Redevco organised a meeting for him to discuss this with Laura Cissal. He was asked about a letter dated 12th January 2008 sent by MFM to the residents at the Property which recounted the meeting held on 15th December 2008 at Redevco's offices and sets out the role of the mobile building manager in some detail. It was put to him that the details listed did not fall within those undertaken by F&T Services and whilst he accepted they were different, he questioned their necessity. In particular MFM managed the whole building and a lot of plant was within the basement wholly for the benefit of the commercial occupiers. His view was that a porter could have been retained for the same costs and asked why there had been no tender process since 2008. He did not believe that the residents were getting value for money.

35. He was asked about the wish to have a full time concierge, which he thought would be good. It would also save him from being buzzed by people seeking to gain access and to accept delivery of items.

36. When the question of the concierge was raised with Redevco he was told that there were no welfare facilities at the Property and therefore a concierge could not be retained. He had suggested that there were WC facilities across the road and perhaps these could be used by any concierge. He was also of the view that the concierge could be sited outside the office lifts at the ground floor and we were taken to a photograph of the area suggested that could house the concierge.

37. In connection with F&T it was suggested by HEH that they were ill prepared to undertake the work. He was asked how this sat with him providing a hamper to F&T following a disagreement with Mr Kelsey but his response was that he was in effect just being nice. He did admit that he had not lived at the building from around 2009 to 2013.

38. His attention was drawn to paragraph 28 of his witness statement and it was put to him that there had been regular tendering of the M&E contract in 2014 in respect of DVBC, 2016 Polyteck and 2019 Vertex.

39. He was referred to a copy letter from F&T dated 30th January 2018 at page 259 of the bundle, which contained a budget for the year and also explained the increase in fees. HEH accepted there was provision for the annual increase in fee related to RPI and that such increase did not take place until 2017. However he thought the increase would be for one year only, not back dated to the start of their involvement thus taking into account ten years RPI. At paragraph 28 of his witness statement he indicated that in his view the increase in fees was on a disingenuous basis but when asked whether he understood what disingenuous meant he said he did not. Asked about his wish to change the managing agents in 2017 he said he wanted somebody to look after the residential units and that in his view F&T only handled the commercial properties. He said that he would pay £15,000 a year plus VAT if it meant that they could reduce other costs.

40. On the question of electricity, we were referred to a letter from Karsons Consulting dated 18th September 2017 which was a review of electricity recharging of the Property which indicated the split of electricity between the residential and commercial and asked whether he would accept a 10% liability for electricity in respect of common parts etc he agreed this. He was referred to exchanges of letters and emails setting out the recalculation of electricity costings and his main complaint appeared to be that these could have been undertaken more quickly and on the question of interest he considered that the residents should be getting some credit as they had overpaid. However, he had taken some legal advice on this and had been advised that he could only go back six years and did not consider that that was a worthwhile effort. He did however believe that they were being charged compound interest but accepted that is not the case and that they have to contribute towards the common parts electricity.

41. Questioning then moved onto the fire alarm and in particular the automatic opening vents. He was asked about his understanding of them. There had been initial confusion as to which floor was relevant but he was concerned that the logbook indicated that the system was working when in fact it was not.

42. On the question of commercial waste, he was directed to photographs showing boxes stacked by the commercial entrance and suggested that these could be removed twice a day. The concern was that it was left to the retailers to deal with this and they could leave items out for collection for a half a day before they were taken away. His complaint was that he had indicated to F&T that the boxes should have been baled so that they could be easily removed.

43. Cross-examination continued into the second day of the hearing when he was addressed to a letter from Laura Cissal in which she outlined the procedures necessary to persuade Westminster City Council to deal with the rough sleepers and to serve an ASBO. She also listed in detail the contact that she had made with a number of bodies and companies concerning the problems. He accepted that there was a significant problem with rough sleepers in the area and that Miss Cissal had made enquiries. An email was referred to from Mr Kelsey dated 24th April 2019 highlighting the problems and giving details of people who could be contacted. He accepted that Mr Goth did all that he could to move people on but did not think that he should be put in danger. He was content with the response from Mr Kelsey of F&T, which is evidenced in another email of 29th July 2019 at page 450 of the bundle. He thought that the problem with the rough sleepers was exacerbated by the cardboard boxes available and wanted a solution to the problem. He thought that such a solution would be a 24-hour concierge there seven days a week and that if the multi-layers of management were removed there would be more money available to pay for security. There had been a suggestion by Burlingtons that CCTV and blue lights could be installed. The latter apparently has an impact upon drug use, but it was not wanted by the residents.

44. The next item that was addressed was the roof works and the liability of the residents in respect of same. This seemed to be circa £20,000 and it was thought that the works should have been covered by the ten-year insurance following the development. We were taken to a number of documents relating to this. The first was the notice of intention dated 29th January 2016 and correspondence flowing

therefrom and the letter from MD Insurance Services Limited of 5th May 2016 explaining the situation on the insurance and the letter from the same company refusing to deal with the matter as an insurance claim.

45. The issue of the booster pumps was then addressed. HEH told us that he had sensed there might be a problem as one pump had been replaced, which he did not query, but was surprised that within a year all the pumps required replacement. He asked for a specification to be provided so that he could get a like for like quote and in the Scott Schedule the request is made for the invoice from the successful contractor. He appeared to accept that M&E contractors Polyteck had sub-contracted the matter and accepted that he had been given notice of intention.

46. In respect of the vaults the position had been explained and he conceded there would be no charge to the Applicants.

47. We then moved on to the mechanical and electrical point and in particular at this stage the Karsons involvement in the procurement. He confirmed that he had seen invoices and accepted that there was no evidence that these costs had actually been charged to the residents save for one item. His witness statement on this point seemed to be concerned that there may have been some form of QLTA and that the services provided by Karsons had not been retendered.

48. On the involvement of Polyteck he confirmed that he understood these had been employed after DVBS had left and following consultation. He does not challenge the consultation.

49. Of concern to HEH was that the Polyteck contract appeared to indicate that £300 cover for each task but he understood the contract had been awarded to them on providing £500 cover so that there had been no benefit to the residents of the £200 difference. He was also concerned at the costs for lighting works, which had been reduced from £2,500 to £1,500 was still expensive because his view was the works could have been undertaken for something under £500.

50. Cleaning was the next area which was reviewed. He was concerned that there was a lack of a contract and there was an overlap with MFM. He accepted a consultation had taken place in 2008 and that notice was given of an intention to enter into a QLT by letter dated 11th November 2016. This was followed on 17th January 2017 with the notice of proposals showing three companies put forward, one being Sparkle. Their contract was produced at page 1,746 of the second bundle confirming that a contract was entered into, which at page 1,740 appears to indicate one month's notice either way.

51. A challenge to the reserve fund appeared to have been made on the basis that in the view of HEH the lease did not provide for a reserve fund. He did however accept that credits for the following years were shown in the accounts and this was not pursued.

52. That concluded the live evidence that we received on behalf of the Applicants.

53. The first witness we heard from for the Respondents was Mr Andrew Foulds who is the UK Managing Director of the Respondent Company having been in that position since February of 2020. In his witness statement at pages 896 to 904 of the bundle he set out the background and the ownership structure of the building. The freehold is owned by Mount Eden Land Limited and the Respondent has a long leasehold interest in the building under a lease dated 18th April 1916 for a term of 999 years from 11th October 1913. The eleven residential apartments were granted out of the Respondent's head lease following an extensive refurbishment programme undertaken by the Respondents in the period 2004 to 2006. We were told that ten of the eleven residential apartments were sold off plan but the building was already operational by the time the residential leases were sold and certainly before any residential leaseholders took up occupation.

54. He told us that prior to the appointment of F&T the Respondent had managed the building in-house but because the Respondent's portfolio was predominantly retail it was decided to take on an external managing agent experienced in a mixed use property.

55. His statement went on to deal with the appointment of F&T and the involvement of HEH. Details were the given of the consultation process and the meetings that took place between F&T, HEH and Mr Lanitis. He confirmed that so far as he could tell there was never a written contract between the Respondent and F&T.

56. The appointment of Burlington Estates was explained. Mr Kelsey, who had been the day-to-day manager for the Property with F&T, was retiring and it appeared that the company did not wish to continue managing the Property. A number of companies were invited to tender, including Burlington Estates who were eventually awarded the contract. Notice of reasons for the appointment of Burlington was issued to the leaseholders in May of 2020 and his witness statement sets out the key reasons for the appointment of Burlington, which was in particular their experience of working with similar high-end mixed use premises in London. Burlington took over the management of the building on 15th May 2020. The witness statement proceeds to deal with the building insurance and how it is allocated between the various parties in the Property and deals with the allegation that the Respondents received commission, which is denied. The witness statement goes on to deal with the electricity, which has been resolved and also moves on to deal with the lift repairs and in particular the maintenance arrangements with Otis. It appears that the Respondents were not able to locate evidence of the consultation process prior to 2007 and has conceded that the service contract is a QLTA. However, it is not considered that there was any prejudice caused to the Applicants.

57. The position with regard to the vaults is addressed as is VAT and the certification of accounts and ground rent demands.

58. He was asked some questions by Mr Bates. Asked what MFM were, he told us that they were facilities managers used by the Respondent over a number of years. He said that Miss Cissal was known for some time and he agreed that she was the widow of the previous building manager. He did not know what her qualifications were but confirmed that she acted as a link between Mr Goth and

others and also dealt with some cleaning aspects. We were told that she manages at least two of the buildings owned by the Respondent and that Mr Goth was indeed based at St James Street. He does work on occasions in the Respondent's reception, and it was accepted that MFM involvement had never been put out to tender, but benchmarking had been undertaken. He was taken to a letter from HEH in which he requested the answer as to whether or not services had been tendered. This was in an email dated 24th November 2017. His response was that he did not consider they would retain a contractor without market testing and that this was done in this case. He was asked why he did not employ Mr Goth directly. He had considered it was a benefit of having Miss Cissal there and did not want employment issues to affect the flexibility. The MFM fee had been benchmarked by Burlington and whilst not knowing the intricacies of the fees he did accept that she would not work without payment. He did not consider there was any particular loyalty to MFM but in his view they had given 12 years of good service.

59. He was then asked about F&T and their uplift of fees. His view was that he did not think it was contentious and did not object to them. He thought the principle in the way that they had calculated the fee was sound and that it was reasonable.

60. On the question of electricity, he accepted that there was no liability for the tenants to pay electricity in their flats but only for the common parts. He confirmed that the issue with the vaults had been dealt with and would not be charged to the lessees.

61. In re-examination he was asked about the role of MFM and the provision of Mr Goth. He told us that a Mr Westman was also employed by MFM and he attended the Property at midday and was there to help move on rough sleepers if necessary. In addition, MFM will provide a replacement for Mr Goth if he is ill or on holiday.

62. Asked by the Tribunal what the position was with the involvement of F&T without a contract. Mr Foulds responded that they worked to the original proposal and following the RICS guide. There was for an initial period of three years and it was agreed that there would be an RPI uplift. He confirmed he was not a party to the discussions resulting in F&T getting the uplift in fees in one go.

63. After his evidence we heard from Mr Goth and his witness statement was at page 704 of the bundle. He confirmed that he was employed by MFM as building manager and had been since March of 2007. Prior to that he was an assistant building manager for MFM from March 1998.

64. He described his role as a roving building manager covering two buildings, 1 St James Street and the Property. He said that he spent about two hours per day at the Property but this could vary depending upon the particular tasks required. He was also available at all times on his mobile and could be recalled to the building at short notice. If he was not available, they could contact his manager, Laura Cissal. His statement went on to list the various duties that he undertook.

65. These included dealing with rough sleepers, handling post, waste management and disposal, fire safety, M&E visual checks, checking the lifts and general

building safety security and cleanliness. The ad hoc duties involved liaising with leaseholders and contractors and keyholding.

66. On some questioning from Mr Dovar he confirmed that he checked the fire vents on a weekly basis and that Mr Westman attended the Property around midday for an hour each day and covered his shifts if he was away or ill.

67. In cross-examination from Mr Bates he confirmed that he was merely an employee with Mayfair and that Miss Cissal was his immediate superior. He had no idea what qualifications she may have. He told us that he used 1 St James Street as he had no office cover at the Property and did provide cover for reception. He confirmed that Miss Cissal was the first port of call for tenants in respect of any night matters.

68. He expanded upon his involvement with the rough sleepers, which required attention perhaps on 90% of the visits. They would be moved on or he would get assistance to do so. He conceded the sleepers were the biggest problem facing the Property. Asked about fire safety he was not aware whether any additional fees were charged testing fire alarms and fire prevention matters. He said he had not seen any invoices.

69. On the question of lifts, he confirmed that if the one serving the residential premises broke down, then the commercial one would be used and also for fitting out some of the flats.

70. In re-examination asked about the possibility of having a desk at the Property he said he did not think this could be done. The firemen have an override panel and that could not be blocked and the desk would be in the way of access. Asked by the Tribunal about security he confirmed there was a security guard across the road but did not think a concierge or porter would solve the problems with the rough sleepers. He confirmed that for the commercial premises he did check the plant to make sure everything was functioning properly.

71. The next witness we heard from for the Respondents was Mr Tony Hymers FIRPM FRICS. Mr Hymers told us he was a director of Burlington Estates and had been since March 2012. He was a chartered surveyor with over 28 years of property management experience. His witness statement set out the chronology of his appointment, which we noted and the handover of management functions. He addressed the criticism of the appointment made. Apparently the Applicant solicitors had written to the Respondent's solicitors expressing concern at his appointment. However, he pointed out that the Respondents had approach Burlingtons in January of 2020 prior to the Applicant's approach. He refuted any suggestion that he was aware of any inside tactics as he had not discussed those with anybody.

72. The relationship with the Respondent since the appointment was addressed. He confirmed that he had acted proactively with the Respondent to resolve issues identified in the management plan where possible. He said he found the Respondents very responsive and that they had a willingness to resolve issues that may have caused the Applicant's concern. He was sorry if the applicants had lost trust in him because of his appointment. He says that he intended that by

taking the appointment he would be able to bridge the differences between the Respondent and the leaseholders and address the issues reflected in his management plan.

73. He dealt with the specific issues of electricity and service charge account certification.

74. In cross-examination he confirmed that he would be working five days a week and that the services to be provided were set out, for example, in a letter of 3rd November 2020 to Mr Lanitis, which dealt with a number of issues and listing the relevant costs incurred presently with Sparkle and Mayfair as against the possible package of a full time concierge. He explained that the letter dated 3rd November was intended to highlight the issues and dealt only with those services provided to the residential portion of the Property. He said he had wanted to see what benefits there might be to the leaseholders by combining some of the services and at the end of his letter he asked for any responses, which were not forthcoming. The letter was in part written because the Applicant's requirement to have a potential dedicated resource such as a concierge and this letter gave them an indication as to those costs and their ability to respond if they had so wished. Asked about benchmarking he said that they used this to consider the contracts but not necessarily in direct like-for-like. They managed a number of other blocks and would use those for comparisons. He confirmed that if the Applicants wanted a fully dedicated resource that could be looked at and that they were not wedded to the MFM service.

75. On the third day of the hearing we heard from Mr Kelsey of F&T. He provided a witness statement at page 710 of the bundle going through to 725. We noted the contents. He confirmed he was a retired chartered surveyor and had worked with F&T from March 1994 leaving in October of 2020. He had been assigned as the managing agent for the Property from June 2008 until May of 2020. His witness statement set out the role he played at the Property and the chronology of the handover the Burlington. The witness statement also addressed the apportionment of the service charges but of course in this regard we have the expert's report.

76. He then went on to deal with the complaints made against F&T particularly in the section 22 notice. He referred to the health and safety issues and in particular the fire escapes and the strict instructions given to commercial tenants to place their waste outside paladins for a short period prior to collection. He told us that if there was any waste in the residential part would be from the residents themselves and it seems to an extent that was dealt with by Mr Goth.

77. He told us that the residential element of the building had, at the time, a stay-put policy and in the event of evacuation being required the Fire Brigade would remove rough sleepers. He addressed the issue of the automatic opening vents, breaches of the RICS code of practice, all of which are noted. He then turned to the Scott Schedule and went through those on an item-by-item basis. We have noted all that is said.

78. In some initial questioning he explained his experience in the residential market and said that he had, just prior to taking over the Property, finished managing 64

flats at the other end of Oxford Street and in Kensington W2 and Store Street, which were mixed use.

79. In cross-examination he confirmed that he did not think Miss Cissal had any formal qualifications. He confirmed also that F&T supervised the building manager and that Mr Goth did liaise with them during normal office hours. He was asked why MFM could not be cut out. He confirmed that F&T did not employ somebody of Mr Goth's status and it was not unusual for people on the ground to report to managers. Certainly he had come across facility managers in both residential and commercial units. Did he think, he was asked, that F&M were predominantly commercial but he said that was not his view. He confirmed that in the 12 years he had been involved there had never been a tender for MFM but that there had now been some benchmarking by Mr Hymers and that he had talked to the Respondent about reviewing fees.

80. He confirmed that he was aware that HEH had prepared a presentation about management layers and that F&T had engaged in this looking at alternative methods but nothing had come of it. He confirmed that he had within the period of his involvement suggested on a couple of times to the Respondents that there should be tendering but nothing had come of it. His view was, however, it would be difficult to find a provider who could produce a roving manager along the line that MFM provided. He was satisfied that MFM provided a service at the Property and were in close proximity. Asked about the lack of tendering particularly for MFM he responded that Burlington had found it difficult to match their involvement and he accepted that not retendering for 12 years was not good practice. Asked why he had not retendered to check value for the residents he said he could not find a contractor to match the works that MFM did. His view was that the residents got better value from MFM than the commercial tenants. He did not recall any specific reason for not retendering.

81. Asked about F&T he confirmed that they operated under the original proposal and also the RICS standard agreement. On the question of the RPI uplift he said that this was undertaken in 2017 to increase the fee for that year to what it would have been had there been the regular RPI uplifts during the contract. This was done he said partially because of the time that was being spent on the Property and the increase in pensions and national insurance contributions. He did not increase just because he was annoyed that the Applicants were looking for an alternative managing agent. Asked what would have happened if he had taken the same route with a residential management company and responded that he thought that probably they would have 'pushed back'. Prior to this point he said F&T had made a conscious decision not to increase fees.

82. His attention was then drawn to the Scott Schedule and in particular the following items:

(a) Item 1 being the disbursements that F&T charged, which he considered were a legitimate business expense. His fee proposal clearly stated that the costs were exclusive of disbursements and VAT and that therefore he had a contractual right to make the charge and that the residential occupiers were obliged, as were the commercial occupiers under the terms of their leases, to pay this cost.

(b) On item 2 his view was that the daily checks benefitted the whole building not just the commercial tenants and that the costs were split to make it more transparent.

(c) He was asked about the possible crossover between Sparkle and Mr Goth and the possibility of using one contractor to deal with extra works which could not be explored as there was no tendering. His response was that there would still be costs but they could just be under different headings. He confirmed that fire alarm maintenance and the Sparkle costs had been tendered.

(d) On the Clifford Talbot involvement it was put to him that they had been involved in the Property for some nine years and that they had procured electricity for Redevco in that time. He was not aware of any other company in the market nor had he tested for fees. He did not advise the Respondent to retender.

(e) On the question of keyholding he confirmed that he thought that G4S were the external contractor procured by MFM and his view was that MFM did not add a mark-up to this but the sums paid merely reflected G4S's involvement. He thought that MFM needed to be involved as they knew the building and means of access, which would not be known to G4S.

(f) On the question of cleaning he accepted that there may be some duplication and indeed he considered that in drawing up the specification for Sparkle he had allowed for a certain amount of duplication to ensure that all situations were properly covered.

(g) Moving on the M&E contract he confirmed that DVBS had been involved in the period 2014 to 2015 and in 2015 to 2019 it had been Polyteck and from 2019 onward Vertex. Prior to the M&E contract there had been a series of contractors undertaking different M&E tasks which meant that one contractor may not be able to fully complete as another contractor may be required. The reference to blame culture related to the commercial premises. However, his view was that the combination of an M&E contractor had the benefit for both the commercial and residential elements as well of course for the building. It meant that there could be a better co-ordination. The more so as there was greater amount of commercial plant than residential. The benefit of the M&E contract was that having five or six independent contractors that they could call on. The M&E contractor had the ability to co-ordinate these various skills. An alternative would be if there was not M&E to get in an expert, it would come up with a schedule and deal directly with F&T. That, however, he said would result in additional fees arising.

(h) Asked why the M&E contractor had been replacing light bulbs he said it would be unwise in the Property to use anybody other than somebody qualified as the electrical light fittings were not in a good state because of their age.

(i) Any questioning went on to deal with the QLTA in respect of the door entry system. His view in his witness statement was that if it was a QLTA only £24.63 had been overcharged. However, the door system was part of the DVBS maintenance contract upon which the residents were consulted. On the question

of the costs at item 12A of the Scott Schedule and whether this was excessive, he said that the scope of the M&E contract was not confined and information showed the contract was tendered and was consulted upon.

(j) Asked about item 14 on the Scott Schedule which had not been commented upon in his witness statement, he said that MFM provided contact with F&T from the occupiers and contractors and also Laura Cissel was engaged. This would be helpful and could be used at the weekends. He asked did he not think there were a lot of people providing the same services, but his response was "yes heaven forbid if there could not be contact" for a residential tenant.

(k) He was then asked about the £300/£500 cover in respect of M&E works. He was unclear as to the £300/£500 payment. He could not remember why DVBS were not reappointed although he thought that they changed hands and had no experience of M&E services. He thought that M&E consulted on £300 pounds or £500 cover but he was not able to be certain.

(l) Questioning then went on to the Otis invoice which is produced in the bundle at page 801. This dated 1st April 2014 but marked as paid on 7th February 2017. The total sum claimed is £5,473.58. It is said by Mr Kelsey that this invoice was not received until February 2017 and he was not aware of any earlier copy.

(m) Matters moved and the next item referred to related to the intruder alarm. It was asked why this was being paid for. His answer was that there were two fire doors, one in Market Place and one in Oxford Street. The flats can reach these from the fourth and fifth floor and are allowed to use them as a fire escape. The lobby that it is referred to is not a designated fire escape but can be used. He could assure us that the residents did gain access from this and therefore benefitted and should pay.

(n) The next item involved the question of scaffolding. The concern was that there had been some redesigning of the scaffolding which had resulted in additional fees being incurred. His comment was that the original scaffolding did not take into account the highway which would not support it. He was asked whether he had requested Lighthouse to reduce but he did not go back to the contractor because the scope of work had changed. The scaffolding had to be designed twice because of this change.

(o) The next point relates to the works carried out to the boosted mains water pump. We were referred to page 546 of the bundle which is a letter from F&T setting out the statement of the estimates, all of which appeared to be related to a Polyteck sub-contractor. It was put to him that it was not possible to tell from this document who those contractors were so that they could check whether or not they were reasonable and alternative quotes could be obtained. At page 551 is a spreadsheet showing the three quotes from the sub-contractors all to supply and install a new pump and control and these varied from £4,312.07 from one contractor to £5,697.66 from the other. The complaint was that you could not tell who had undertaken this tendering process.

In re-examination he was asked to comment upon the overlap between Sparkle and MFM. Apparently Sparkle were on site for about an hour between 7 and 8

and the waste removal would take place after that time. In respect of the item on the Scott Schedule we were directed to the night site management resources at page 990 showing a charge of £798.26 excluding VAT which was divided at 23.5% to the flats which is something just under £188 shared between the 11 properties. Reference ass also made to letter of intent which sets out the various quotes obtained for M&E works showing Polyteck, DVBS, Axon and Capricorn. It is said that the intention to appoint Polyteck arising from this documentation would also include the ability for them to sub-contract. Insofar as the Lighthouse fees for scaffolding were concerned, it was pointed out that their fee was 10% of the total net cost of the contract and accordingly they have not been paid extra for doing the scaffolding apparently on two occasions.

83. That concluded the evidence relied upon by the Respondents and we then received written submissions from both Counsel, which were of great assistance to us. In addition to the written submissions we heard orally from Counsel.

84. We deal firstly with Mr Dovar's written submissions and then his oral closing comments. His closing note, as it is referred to, reminds us that this is an application under section 27A of the Landlord and Tenant Act 1985 and is not anything to do with the appointment of manager application. The application he said should have followed the directions listed in this case but that by straying from that framework the Respondent has been put to a disadvantage in having to meet the terms of the case, that our task has been made more difficult, that irrelevant issues could be introduced and there may be a prejudicial latitude to chop and change the case. In the latter the Respondent is concerned that the Applicant would try and change their case particularly with regard to what is challenged under section 20 and the basis for the item 36 challenge which the Respondents will need to the opportunity to reply. In respect of the section 20 issues additional documents were provided and relevance to those will depend on the Applicant's closing submissions.

85. What Mr Dovar said was not relevant was the appointment of a full time concierge when it appears that everybody was content with Mr Goth. In addition, although there was an allegation that there had been no tendering or a lack of benchmarking, that in itself Mr Dovar said was not a basis for determining that a cost was unreasonable. He reminded us that there were many statutory protections for residential service charges but regular tendering was not one of them. Secondly, even if the statutory consultation process compels competitive tendering it is only to ultimately facilitate a section 19 appraisal hence the relevance of prejudice for dispensation as envisaged by the Supreme Court in Daejan v Benson. It was not he said possible to simply point to a lack of tendering as establishing a case for unreasonable cost. The Applicants had provided no evidence of alternative costs. Indeed, the only evidence provided supports the proposition of the costs being incurred were reasonable.

86. Under the heading 'Items in Issue' he referred to the lift, certification, section 20B, the QLTA for F&T, their fees, question as to whether MFM should have a QLTA and whether their charges are reasonable. Reference was also made to the question of VAT although in truth this was not pursued to any degree by the Applicant.

87. The closing submissions in writing from Mr Bates for the Applicants said there were two distinct aspects to this case. The first concerned an over-arching complaint that the style of management was opaque with costs being unreasonably incurred. As a result of the lack of tendering this itself was a breach of section 19(a) of the 1985 Act and part of the reason why the Applicants offer nothing in respect of most of the service charges.

88. The second aspect was individual items of service charge expenditure set out in the Scott Schedule.

89. Under the heading Management Failings, it was said that the concern was about the role of MFM in the building. It was established that there had been no tendering, that there was a close relationship between MFM and the Respondents and that Laura Cissal of MFM appeared to have no relevant qualifications.

90. The Applicant relied on Mr Kelsey's acceptance that the lack of tendering was not good practice, which also prevented the Applicants from checking the combination of services, which in turn meant that the Respondents had not put their mind to other and possibly cheaper ways of procuring these services. There was also no consideration as to whether MFM were really needed given that Mr Goth reported primarily to the managing agents. It was said there was also the overlapping of services, for example, Mr Goth and Sparkle. Finally, this lack of tendering led to inappropriate contractors being chosen, for example, the M&E contractor employed to change light bulbs. It was said by Mr Bates that the M&E contractor was for the benefit of the commercial tenants and not for the leaseholders and there was certainly no evidence of any savings for the leaseholders by the use of this arrangement.

91. His submission went on to suggest that there were two reasons for this concern. The first was that regular tendering is an integral part of section 19(1)(a) of the Act. That this protects the rights of the leaseholders and that the second test concerns the pounds and pence of the service charge. Section 19 is recited and whether something is reasonably incurred is a question of examining the process by which the landlord came to incur those costs. Reference is made to the case of Forcelux Limited v Sweetman [2001] 2E.G.L.R173. It is said that the Respondent had not met this requirement to test the market. There had been a failure to tender on key contracts for Mayfair, Sparkle and Clifford Talbot. It was no answer Mr Bates said, as the landlord does, that the tenants cannot show the costs would have been if there had been tendering. That he said missed the point as explained in Forcelux that something is unreasonably incurred is about the process not just the outcome.

92. The second matter as to why this is important because when considering whether costs are reasonable the FTT must approach the question from the perspective of the tenant and the case of Waaller v Hounslow LBC [2017] EWCA Civ45 at 26 where that phrase is considered. Taking these matters into account, it means that the Applicants offer nothing for items 1 to 6 and 8 to 12. And the same applies for subsequent years. There has been no tendering, no analysis of whether these were necessary or whether some services could be combined and no consideration of the benefit the leaseholders derive before procuring those services.

93. The submission then went on to deal with the specific items on the Scott Schedule. There seems little to be gained by recounting all that is said by Mr Bates as we will address those in our findings in respect of the Scott Schedule itself.

94. We turn then to the oral submissions made by Mr Dovar and by Mr Bates. We heard first from Mr Dovar. He pointed out that the evidence in connection with this case had largely come from HEH both in his witness statement and correspondence, and that the majority were silent. The suggestion that there were systematic failures was in Mr Dovar' submission incorrect. Insofar as the major works were concerned there was no real complaint save for scaffolding. One might ask therefore why the proceedings were being brought. It is Mr Dovar's view that HEH considered he knew best. There is suggestion that the Respondents were more interested in the commercial tenants than the residential ones. However, Mr Dovar did not think this was borne out by the cost allocation and the assistance given to HEH by Mr Hymers and by the Respondents. For example, one considered the vaults where expert advice was sought and another route suggested by HEH. This was apparently adopted and approved and was not the actions of a landlord who overrides the residential tenants. In addition, HEH was involved in the appointment of F&T.

95. Relying on the directions Mr Dovar said it was for the Applicants to set out what was disputed and why. They needed to follow these directions so that the Respondent would know what was required. Both sides have been represented throughout and therefore there was no excuse for the Applicants not making clear what their case was. It appears now that the Applicant's argument was that the failure to tender meant that many of the charges should not be recovered. This was not something that was included in the grounds of application and the lack of tendering for example for MFM was not mentioned nor was it referred to in the section 22 notice. Further the statement of case and reply makes no mention of the tendering and the failure to be able to recover if such tendering had not taken place. There was nothing in the documents to support the explanation as to why nothing was offered but the Applicants now rely upon the lack of tendering.

96. There were a number of matters that were irrelevant. For example, the possibility of employing a full time concierge and a building manager in place of Mr Goth. Whether Mr Goth would want to work for Redevco was not established. Insofar as the concierge it was difficult to see where he would be housed and it is a management issue, not a cost issue. It was pointed out that Mr Hymers had tried to get the involvement of the Applicants but there had been no response.

97. Dealing in more detail with the benchmarking/tendering Mr Dovar says that the statute did not provide any such limitation when one looked at sections 18 to 30. The Applicant relies on section 19 and the lack of tendering being a breach of section 19 (1)(a). The Forcelux v Sweetman case dealt with the market norm. If this was the case then the Respondent could have obtained expert evidence to show what the market norm would be. The Applicant should have offered an amount or evidence as to what the market norm might be. There was no statutory requirement for tendering and it is section 20 that imposes such a restriction where dispensation can be granted. The question that we needed to

consider was whether or not the Applicants had been prejudiced by the failure to tender. It was for the tenants to establish such prejudice.

98. On the question of apportionment, it was only the question of the lift that remained and it was argued that the apportionments should be suggested in the report, namely that if it is established that the leaseholders have use of the lift at all then the current service charge apportionments whereby 66.05% of the lift costs are charged to the leaseholders should apply. The leaseholders had contended that one lift should be 100% and the other dealt with solely by the office users. Alternatively, the total costs be apportioned between the office and the leaseholders on a 50:50 basis.

99. On the question of certification, it was pointed out there never had been a deficit and the surplus had always been accounted for. The Respondents accept there was no certification in accordance with the lease but full information has been provided to the leaseholders. We were referred to the lease and a paragraph 6 of the fifth schedule that says as follows:

"As soon as practicable after the exploration of each accounting period there shall be served upon the tenant by the lessor or his agents a certificate signed by such agents (and where appropriate endorsed by accountants) containing the following information:
(a) the amount of the total expenditure for that accounting period
(b) the amount of the interim charge and further interim charge (if any) paid by the tenant in respect of that accounting period together with any surplus carried forward from the previous accounting period
(c) the amount of the service charge in respect of that accounting period and any such excess or deficiency of the service over the interim charge and the further interim charge (if any)."

100. It was Mr Dovar's view that the information was provided but it had not been signed but it was now compliant.

101. At page 955 of the bundle was an example of the service charge statement sent to the clients this for the year ending December 2018, which would appear to set out that information which was required under the terms of the lease.

102. On the question of the Otis invoice and section 20B the matter we needed to determine was whether F&T got the invoice when it was dated or when it was paid. This was apparently only after it had been chased by Otis.

103. Insofar as the QLTA for F&T was concerned the question was whether a contract had been entered into for more than a year. The Respondent accepts there was a no real written contract and the terms were set out in the letter of 9th April 2008 which shows a three-year period terminable upon three months' notice. His submission was that the correspondence that we were referred to does not contain evidence that there was a QLTA and no party was able to say that that was the case.

104. As to the increase in fees by F&T the Applicants say that this was not appropriate. The real question is whether F&T fees were reasonable as there is no actual

challenge to the amount that was charged once the RPI uplift had taken place. Mr Dovar submitted there was no evidence to show that for any years in question F&T services had been so bad that we should reduce the amount.

105. Moving on to MFM he was of the view that this provided a bespoke provision for services and it would be difficult to tender on a like-for-like basis. Indeed, Mr Hymers and Mr Kelsey appeared to have agreed that this was the case. This should be considered in the light of HEH's suggestion for a concierge, which was double the amount that was being paid. No steps had been taken to place before the Tribunal alternative costs. The question whether it was a QLTA was also in the air. There was no evidence as to any challenge to the arrangements or the fees. Miss Cissal provided a liaison service with the managing agents and whilst there was some overlap it was not great. It was clear there was the ability to change from MFM but Mr Dovar's view was that this was a good fit and the main cost of the building related to the attendances by Mr Goth as a manager and he was popular with the residents. Mr Dovar then went through individual items of the Scott Schedule, which we will deal with in the completion of the Scott Schedule in due course. We have, however, noted all that that he has said.

106. In response Mr Bates made a shorter submission. He posed the question whether HEH was a liar by reference to the use of the word disingenuous in his witness statement, which he considered not to be of relevance. Material that was relevant to the section 24 application was the element of overlap, the failure to adhere to section 20 of the Act and the lack of tendering particularly in the light of F&T's advice to the landlord that tendering should be considered.

107. He posed the question as to what as a matter of law was the position under section 19(1)(a) of not tendering. His view was that section 19(1)(a) was a process to protect the tenant and it was section 19(1)(b) that dealt with any challenge. Reference was made to the Forcelux and Sweetman case and it was Mr Bates' view that tendering would give the leaseholders an assurance that the landlord had their financial interests in mind when he was instructing or obtaining works. It is important for the section 19(1)(a) process that tendering does take place. He referred us to the evidence of Mr Kelsey where he told us that he had raised the question of tendering with the Respondents but that had not been pursed. Mr Hymers also referred to benchmarking. It was in Mr Bates' view unique to have a witness who says that his client had rejected his advice on tendering. It was put to us that if we were with Mr Bates on the section 19(1)(a) point we did not need to deal with the final points as actual costs. Mr Bates then proceeded to go through the individual items on the Scott Schedule that were in dispute and as we did with Mr Dovar, we have noted all that has been said and will deal with those when we consider the provisions of the Scott Schedule.

108. Mr Dovar made a brief response on the question of law. He reminded us that tendering in connection with section 20 gave certain restrictions and that section 19(1)(b) was an overlapping clause setting out the standard of work. Section 19(1)(a) was whether you should do the work but remember the lease. In the case of Waaller there was a discretion to carry out works and there was no contest that the work should not have been undertaken. Therefore, non-tendering does not rule out the recoverability under section 19(1)(a). The question was whether the costs had been reasonably incurred and if it was a legal leasehold obligation then

that was in effect the end or the matter and the question of market testing was not appropriate.

109. Finally, there were some directions given in connection with the preparation of the video evidence which was provided to us after the hearing had concluded and which we have viewed.

FINDINGS

110. The first matter that we will address relates to the apportionment of the lift costs. The evidence from HEH was that if the residential lift was out of service they could utilise the office lift, which he estimated he used perhaps two times a year. In contrast the office workers would have to take stairs to get to the third floor. Although the Applicants retained expert, Mr Forrester, indicated that a split of 50:50 for both lifts might be appropriate, this was on the basis that it could not be established that leaseholders had the use of the office lift at all times. HEH's own evidence is that the lift can be used at all times and if that were to be correct then both experts viewed the current service charge apportionment, namely 66.05%, as being reasonable.

111. Our finding is that the expert's view following evidence that the lift could be used at all times leads us to the conclusion that the appropriate apportionment for both lifts is on the basis that the residential users contribute 66.05% of the cost.

112. We turn then to some stand-alone issues before we move on to the main arguments in connection with the service charge costs. The first matter that we will address is the Otis invoice, which was to be found at page 803 of the landlord's bundle. This shows an invoice dated 1st April 2014 in the sum of £5,473.58. It is date-stamped paid 7th February 2017 and appears to bear a date-stamp confirming receipt on 30th January 2017. There is an exchange of emails, one of which is dated 18th January 2017 from the Otis accounts department, which recounts a conversation with Mr Kelsey the week before when he asked that a copy of the invoice be supplied. The email goes on to say *"As you will see this invoice is from 2014 and I could not find any details on our systems why this was not paid."*

113. We do find it surprising that Otis would have waited this length of time to have chased for an invoice in this sum. There is, however, no suggestion in the email from Otis that this is any form of deliberate non-payment and indeed within a few days of having received the invoice the total sum claimed is paid. It seems to us, and we find, that on balance we agree the Respondent's case in respect of this matter, namely that they were not made aware of the invoice until January of 2017 and settled same within a few days. In those circumstances we find that section 20B is not relevant and the invoice is properly due. No challenge is made to the quantum.

114. We then turn to the question of QLTA's. The first one we consider is the F&T arrangements. In a letter to Mr Lanitis of 9th April 2008 (see page 933 of the hearing bundle) the Respondent confirms that there has been a review of the management of the Property and that a consultation and tender process had been

undertaken at the end of the defects period. The appointment of F&T was intended to provide a new point of contact with MFM still remaining in place. The letter goes on to give the details of the benefits, the address of F&T and Mr Kelsey and confirmed that the anticipated handover was 1st June 2018 for a term of three years, termination on three months' notice. This is also supported by the tender summary for residential management to be found at page 1,642 of the second bundle onwards which when comparing F&T's arrangements with those of County Estate Management Limited, a company suggested by HEH and Moretons shows the standard contract and three month's termination notice period for F&T, six months for County Estates and three months for Moretons. Further at page 1,683 under the heading Management Agreement, F&T indicate that they propose the agreement setting out the terms of appointment for the management of a block published by the RICS "to be used as the basis of the terms of our engagement along with the appendices setting out fee scale attached."

115. Our reading of the documentation, which is available to us in the absence of one conclusive contract, is that the initial period of engagement was for three years but that at any time during that three-year period the contract could be terminated upon giving three months' notice. It is not a QLTA. If we are wrong about that, it does appear clear that HEH was closely involved in the consultation process we believe representing the leaseholders even at that stage and that accordingly was fully aware and consulted about their appointment.

116. The next item that might constitute a QLTA is the door entry. We were told that this fell within the M&E contract with Darenth Valley Building Services, which was an M&E contract. It appears, therefore, it falls within their sphere of operation at the time. It then appears to move to Polyteck Building Services upon their instruction. On the face of it there does not appear to be any specific contract relating to the door entry system but rather that it appears under the M&E contracts. It would not therefore appear to be a QLTA.

117 As to the cleaning it appears clear that consultation took place and that the agreement allows for termination on one month's notice (see page 1740 of the second bundle). Our finding is that this is not a QLTA.

118. The dispute relating to MFM's involvement does not so much relate as to whether it is a QLTA but rather the fact that it was not tendered or benchmarked to any degree and that there is considerable crossover of work. We will deal with that separately.

119. The other item that was stand-alone was the question of the decking. There appears to be no dispute that the roofing area had become defective and that it had to be repaired. There is no challenge to a level of costs. We understand it that the work was carried out before the leases were issued to the residential tenants in 2006. It may be that if this is a dispute it is a County Court matter. The question of limitation would apply. There is certainly no expert evidence before us to explain clearly what has caused the problem, although there is at page 482 a summary which has been probably erroneously redacted and makes it impossible for us to clearly ascertain what was found. It seems to us that this was a problem which occurred during the refurbishment and before the leases were

entered into. If there is a counter-claim then that would need to be pursued through the County Court. In those circumstances, we are prepared to allow the recovery of the costs associated with the decking subject to any further proceedings that may be taken. It seems to us that there is an obligation on the landlord to carry out the repairs under the terms of the leases and it would be for the tenants to show that the problems were wholly down to the landlord.

120. Some complaint had initially been levelled at the lack of certification in respect of the accounts. This was in truth not pursued by the Applicants. In any event, we find that the accounting information provided by the Respondent is very full and the service charge accounts appear to have been prepared appropriately, apportioning matters between the four schedules, and certainly from 2016 onwards that there the independent accountant's report. The clause of the lease relevant to this is at paragraph 5 in the fifth schedule which says as follows:

"If the service charge in respect of any accounting period exceeds the interim charge and further interim charge (if any) paid by the tenant in respect of the accounting period together with any surplus from previous years carried forward as aforesaid then the tenant shall pay the excess to the lessor within 28 days of service upon the tenant of the certificate referred to in the following paragraph and in case of default the same shall be recoverable from the tenant as rent in arrear."

121. It did not appear to be disputed that there never has been a deficit. There has always been a surplus, which has been accounted for. Whilst the Respondents accepted that the documentation did not comply with the requirements of the lease, full information was provided to the parties and in those circumstances no prejudice has been occasioned to the Applicants and no reduction presumably in the management fees should be made as a result. It was certainly not argued before us that no service charges were recoverable because of the lack of a certificate.

122. We will then turn to the uplift in fees by F&T. It appears to be common ground that such contract as existed enabled F&T to increase their fees on an annual basis by reference to the RPI uplift. They chose not to do so. The evidence from Mr Kelsey confirmed that the uplift of the fees in 2017 was only to that which it would have been the case had there been an RPI uplift in that year. There had been no increases in between. He denied that there had been this increase in 2017 because the Applicants were looking for an alternative managing agent. He told us that F&T had made a conscious decision to not increase the fees but had decided that in 2017 there was an excess of time being spent and also increases in pension and National Insurance contributions persuaded them that the increase should take place.

123. Our finding on this is that F&T could have decided to uplift on an annual basis but chose not to do so. It was not unreasonable in 2017 to increase the fees as the Applicants had had the benefit of several years at a fixed rate. In those circumstances we do not consider that the increase in one hit was an unreasonable step to take given the entitlement of F&T under the arrangements that existed during their period of involvement with the Property.

124. Whilst we are talking of F&T fees, it seems to us that the disbursements claimed at item 1 on the Scott Schedule and thereafter are not unreasonable. The terms upon which F&T were engaged clearly indicated that disbursements were in addition and in those circumstances we find they are allowable. These terms were shown to the Applicants. It must be said that the costs involved to each lessee are de minimis.

125. The next matter that we must address is the submission by Mr Bates that the lack of tendering in respect of a number of contracts means that the Respondent is not entitled to recover the fees by virtue of section 19(1)(a) of the Act. In Mr Bates' helpful closing submissions he sets out the basis upon which he says that the items claimed on the Scott Schedule at 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12 for the year 2014 and subsequent years are not recoverable because there was no tendering. In addition, there had been no analysis of whether these were necessary costs or could be combined nor had there been consideration of the benefit to the leaseholders from procuring these services before they were entered into. The case of Forcelux Limited v Sweetman [2001]2EGLR173 is cited. The key contracts to which Mr Bates referred were the MFM arrangements, the cleaning with Sparkle and the retention of Clifford Talbot as consultant in respect of electricity.

126. Much reliance is placed on the evidence of Mr Kelsey in connection with the lack of consultation. It was put to him that in the 12 years of the involvement of MFM there had never been a tender process, which he confirmed was correct. He did think that there had been benchmarking carried out by Mr Hymers and he confirmed that he had had talks with the Respondent about reviewing matters.
He confirmed that during his period at the Property he had on a couple of occasions suggested to the Respondents that there should be tendering, but whilst there appeared to be a positive response to that, in fact there had been no tendering.

127. He considered in respect of MFM that it was difficult to provide a company who would produce a roving manager and carry out the services that MFM provided. His view was that the Respondent wanted someone to provide a service to the Property which MFM fulfilled. Mr Kelsey did in answer to a question concerning tendering say that they had considered an alternative but nothing fitted as well as MFM. Further he confirmed that Burlingtons had found it difficult to match the requirements needed of MFM, although he accepted it was not good practice to go more than 12 years without retendering. Asked why he had not retendered, he said he could not find a contractor to match MFM.

128. We will come on to dealing with the MFM involvement in more detail but at the moment just address Mr Bates' argument that a failure to tender in respect of a number of contracts renders the Respondent unable to recover same. We have noted the extract from Forcelux in his closing submission. In addition, reference is made to the case of Waaller v Hounslow LBC [2017]EWCA Civ 45 at paragraph 26 where the proposition whether costs are reasonably incurred should take into account that those costs are to be borne by the lessee. It was suggested that in the case of this Property the landlord had prioritised the interest of the commercial tenants over the residential ones and that the landlord should ask himself what benefit the leaseholders got from the service provided.

129. In response to this submission Mr Dovar complained that the Applicant had not followed the directions which required that the Applicant set out what was disputed and why, together with any alternative quotes. Both sides had been represented throughout and there was no excuse he said for not making clear what the case may be. Our attention was drawn to the grounds that accompanied the application in which it was said no mention was made to the retendering arrangements and that a failure to do so would result in irrecoverability of those costs. It is said that the tenants' statement of case and reply make no mention of the failing to tender and the impact that that would have and nothing in the documentation supports why an offer of nothing was because of the failure to tender.

130. This is in our view something of a novel argument by Mr Bates. Mr Bates relies on section 19(1)(a) to the effect that the relevant costs are only recoverable to the extent that they are reasonably incurred. It is we think accepted that the landlord is not obliged to accept the cheapest method of resolving a problem and that if the landlord chooses a course of action which leads to a reasonable outcome, the cost of pursuing that course will have been reasonably incurred even if another cheaper outcome were available. It seems to us that whether a cost is reasonably incurred is not simply a question of the landlord's decision making process but also a question as whether or not the outcome is reasonable. In this case the Applicants, despite the terms of the directions requiring them to indicate what sums they may put forward in respect of matters, has not undertaken that task. Indeed, we accept Mr Dovar's contention that it was not until Mr Bates' closing submission that the true colours of the Applicant's case came to light. We can see no suggestion in the Scott Schedule that an argument is to be placed before us indicating that the lack of tendering means that the bulk of the fees claimed for each of the years is irrecoverable. We find that absence concerning.

131. However, if we are to do due justice to Mr Bates' argument then it seems to us we need to address the proposition that lack of tendering means costs are irrecoverable. Mr Bates seems to be arguing that since 2014 onwards each item of cost, which he numbered as 1 through to 6 and then 8 to 12 and this continuing for each year, cannot be recovered. These items as set out on the Scott Schedule relate to the charges of F&T, MFM, electricity procurement, key holding, cleaning, M&E contract, fire alarm testing door entry costs and agents fees. Even if his argument that tendering should have been undertaken before the Respondent can claim the service charge costs it cannot be right in our finding that that can cover the period from 2014 through to 2020. The tendering process does not happen on an annual basis. It is only the MFM and F&T involvement that has been in place during the whole of this period, as we shall come on to. We have dealt with those contracts which may or may not be QLTAs but it would be an unusual step for a landlord to tender each and every contract that they have on an annual basis. May be such a tendering process every three to five years. If that is the case and applied to this, it would seem to us that a number of items of expenditure would not have required tendering during the earlier years of the dispute. However, this is not addressed by Mr Bates in his final submission, instead he proceeds to a broadbrush approach indicating that it applies for all the years in dispute. This seems to us to be one flaw in his argument.

132 The second matter is that there is no provision within the Act for a tenant to be able to argue that the tendering process was essential before the landlord can recover the cost. Statute has included the ability of a landlord to avoid the provisions of s20 of the Act by use of s20ZA. There is nothing in the Act that specifically states that the lack of tendering means that any costs incurred under section 19(1)(a) are irrecoverable. That is a draconian step. In Daejan the Supreme Court at para 42 states that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary service or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1) (a). S20 and s20ZA cover the situation where there has been a lack of consultation and we have some instances of that in this case. If that were the case the Landlord has the safety net of s20ZA. On Mr Bates proposition there would be no such safety net. Certainly, it was not really put to us that the Applicants had been prejudiced to any degree. No attempt was made by the Applicant to produce evidence of any alternative costings to show that that which they were being charged was unreasonable. Further the allegation that lack of tendering removes from the landlord the ability to recover any service charge during the period of this dispute is not put forward, other than in Mr Bates closing submission. Had it been the landlord may well have been able to provide some expert evidence to rebut the prejudice, if there be any, caused to the Applicants in this case.

133. In those circumstances we must reject Mr Bates' argument that the failing to tender results in the costs being irrecoverable.

134. We will then turn to the Scott Schedule which we have completed but which we will also expand upon in this decision.

135. Item 1 we have dealt with.

136. Item 2 refers to MFM's involvement in respect of health and safety and other matters. The letter from MFM dated 12th January 2008 was sent to HEH, a Mr Cigana and Mr Lanitis. This was from Laura Cissal and sets out the works that were and are undertaken at the premises. The letter followed a meeting which was attended by some of those addressees. The items of work undertaken are extensive and we have noted the contents of this letter. Miss Mears in her statement, and before us, made much of the presence of rough sleepers and the fact that Mr Goth dealt with these on a daily basis. There were a number of tasks that were undertaken when he visited the Property and his attendance was welcomed by the Applicant. We are therefore at something of a loss to understand their reasoning behind this particular challenge although we do note they are concerned about certain duplication. We will deal with that separately. The costs to the residents is really quite low given the steps that Mr Goth undertakes on a daily basis and we allow this sum as we have set out in the Schedule.

137. In so far as item 3 is concerned the Schedule sets out our position on this. It seems to us the lease does allow the employment of professional people and HEH accepted that the residents had to contribute to the communal parts electricity.

138. Item 4, this is de minimis. This is we are told the cost of G4S holding keys which were arranged through MFM but that MFM did not make a mark up on this. It Mr Kelsey's evidence that they provided cover when there was no one else available.

139. On the cleaning contract the contract provided is in the second bundle at page 1,738 onwards. Under the terms and conditions, it is quite clear that the contract remains in place until terminated upon either party giving one month's notice. In those circumstances we find it cannot be a QLTA. We also understand that consultation was undertaken. There is no complaint as to the standard of cleaning nor the costs and accordingly this sum is allowed.

140. In so far as items 6 and 7 are concerned there is no allegation that the provisions constituted a QLTA. The videos that we have seen of the common parts including the basement and plant areas show substantial plant and equipment in the building and it seems to us eminently sensible to have one M&E consultant who has knowledge of the plant and equipment and who can undertake works or in the alternative can bring in a sub-contractor who can deal with matters. As to the items that were required to be repaired solely for the residential areas, we note that the Applicant says it is only the booster pumps and some lighting. We were told by KS that the lighting circuits were perhaps in need of some attention and that an M&E contractor would be required to deal with those for safety's sake. The annual cost to the residents as a schedule 1 sum for the maintenance contract is not great. In so far as the M&E repairs are concerned these were not really challenged. The schedule of costs at page 981 of the first bundle sets out the expenses and in the absence of any particular item of expenditure with any proposal for an alternative cost we see no reason to disallow the amount claimed for item 7.

141. In so far as item 8 is concerned the evidence we received from Mr Goth is that he had had some training enabling him to test the fire alarms and the automatic opening venting system. This he did on a regular basis charging £120.17 per month. We were satisfied from the evidence given to us by Mr Goth that he had sufficient training to be able to undertake these steps and that he attended on a weekly basis not only to check the fire alarm system but also to check the roof vents.

142. On the question of the managing agents' fees these we have dealt with above. There is as we have indicated no fixed contract although correspondence indicating a three-year term terminable upon three months' notice. We read that to mean that within the three-year period it could be terminable upon three months' notice. If we are right in that then there is no QLTA. If we are not right then it does seem to us that certainly HEH on behalf of the leaseholders was actively involved in the consultation process in putting forward his own proposal. We do not consider that the Applicants have been prejudiced by this matter, although it is accepted that there does not appear to have been a formal section 20 consultation. However, F&T have been the managers since 2008 and it is surprising that this matter should only resurrect itself in these proceedings. There appears to be no other challenge to the fees charged by the managing agents and indeed from our knowledge and experience they would not seem to be

excessive charges for a building of this nature in this local. In those circumstances we are prepared to allow the managing agents' fees as claimed.

143. We then turn to the residential building manager and the role of MFM. Although the Scott Schedule it is suggested that the role is superfluous the evidence given to us by HEH and Miss Mears was that they appreciated Mr Goth's involvement. Yes, there may be some crossover with Sparkle in connection with cleaning matters but not any great degree and in any event that provides a better service for the Applicants. There is no indication from the documentation before us that the M&E contractor does any great amount of work which might conflict with those carried out by Mr Goth and MFM. There is a possibility that the replacement of light bulbs could be considered but this is minimal and as SK said there is some concern as to the electrical system. We have seen the letter from Miss Cissal sent to three of the residents and referred to above which sets out the works that MFM were undertaking and have been undertaking in their time at the Property. Although much was made by HEH about the need for a concierge when this was raised by Burlingtons no response was received to the proposals and the costs that ensued. We do not consider it would be possible to install a desk within the existing premises which would enable a full-time porter to be sited there. There is no room on the ground floor where the lifts entrances are to be found and having a porter on the fourth floor would seem to defeat the object. Mr Goth we were told by the Applicants does a good job. He attends regularly, he moves on the rough sleepers as best he can, he deals with rubbish and other issues and acts generally as a porter for the Property. Much has been made of the lack of qualifications of MFM. It does not seem to us that the qualifications are required. MFM and the Respondents have a long and it would appear fruitful relationship. No evidenced has been adduced that the fees that MFM are charging are excessive. This is another example of a complaint but a failure by the Applicants to address the requirements of the directions to clearly set out what is in dispute and what they would pay for such a service. We appreciate that on Mr Bates' proposition there is nothing to pay because these costs have not been tendered. We accept the evidence of the Respondents that there is no written contract other than the letter from Miss Cissal setting out the works they do but that they were able to terminate MFM's involvement upon reasonable notice which would seem to remove any QLTA argument.

144. In so far as the relationship between MFM, the managing agents and the M&E contractors are concerned, there was no real evidence before us of any crossover. In so far as we were aware, the managing agents do not attend the Property on a regular basis as does Mr Goth and nor do M&E contractors. Furthermore, the M&E contractors confine their works to matters of that nature and do not involve themselves in the day to day issues at the Property such as some cleaning, removal of rubbish, attending to rough sleepers and providing general assistance to the residents as and when necessary and available.

145. That deals with the service charge year 2014. In respect of the subsequent service charge years, the same queries are raised and the same response would be given save for one or two matters that we will deal with. The first relates to the lift repairs and the section 20B point concerning the Otis invoice, which we have dealt with separately. We accept that section 20B does not apply and that this cost is recoverable.

146. The next item on the Scott Schedule is at number 34, M&E repairs to which a response has already been given and does not seem to be pursued, the only point therefore remaining an issue is the involvement of Polyteck.

147. The next item that we must deal with is under M&E repairs schedule 1 at item 34 which is a challenge to the Polyteck contract and the differing sums allowed for works for which no additional charge would be made. We have noted all that has been said. At the conclusion of the hearing the Respondents produced an appendix to the skeleton argument, which was headed 'Closing Clips'. This included a copy of the Karsons consulting maintenance tender report dated February 2016. At page 12 of the report there is confirmation that a recommendation is given for a semi-comprehensive contract limit of £300. This follows on from the conclusion where contractors were asked to provide an addition option for a £300 limit. As we understand it, this is the contract that was entered into with Polyteck and would appear to be in accordance with the tender documentation produced to us. We accept that this was produced rather late in the day but it seems to meet the concerns set out the tenant's reply under this item in the Scott Schedule.

148. We believe that covers the multitude of outstanding issues both by reference to the Scott Schedule and to this decision. We would like to take this opportunity of thanking both Mr Bates and Mr Dovar for their assistance during the hearing and in particular in their provisions of their opening speeches and closing submissions. We should also like to thank Mr Goth for we believe it was he that carried out the video inspection. We were not addressed on the question of costs. However, it seems to us that in the main the Respondent has been successful and we would not order that there be a section 20C finding. Further for the assistance of parties, we do not think it could be said that anybody has acted unreasonably within the provisions of Rule 13 but that is a matter for the parties to consider if they wish.

Andrew Dutton

Judge: _____

A Dutton

Date: 27 April 2021

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 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 to 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 (ie 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.

General (Respondent): It is the Respondent's position that the Applicants have failed to address the directions in terms of what they should have set out in the Schedule. The Tribunal is referred to the Respondent's Statement of Case for further details. As a result, any response given in this Schedule is made strictly without prejudice to the fact that the Applicants have failed to assist the Tribunal and the Respondent to deal with the matters in issue.

DISPUTED SERVICE CHARGES Y/E 31.12.2014

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
1.	Site Management Resources Sch.1	£626.72	Please provide a breakdown of the "out of pocket" expenses invoiced by F&T.	This is not a challenge. See attached  Orwell - Sch1 - Disbursements 2014	This includes the managing agent's travel costs and photocopying. Those are business overheads of the agent and should be included in the fee, rather than charged as a separate item to the leaseholders. There are a lot of bank charges, suggesting poor financial management	The agreement provides that these fees can be charged and we see no need to disallow them

2.	Health & Safety Sch.1	£3,015.83	These costs relate to Mayfair's costs for carrying out testing and reviewing Fire Safety documents. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where DVBS was retained to undertake the same checks. Moreover, some of these costs must be attributable to the commercial parts of the building and the tenants require it to be shown that there was a proper allocation between the residential and commercial parts. To this end, please provide a copy of the tenancy agreements for the office units.	Mayfair's costs total £2,396.31. These charges are for low level daily checks of the building for which no qualification is required. The DVBS contract was for less regular but more extensive checks. Contracting DVBS to attend daily would be more expensive. Accordingly, there is no overlap with DVBS. This does not include fire alarm testing. There is a separate invoice for fire alarm testing. This is a Schedule 1 item (whole building). The general rationale for apportionment is set out in the Landlord's Statement of Case. Under Schedule 1 costs, each residential tenant only pays between 1.59% and 4.17% of an item; cf. 6.76 % and 17.75% where it is solely residential and under Schedule 4. The Tenants have not positively asserted any different percentage that should be used. Tenancy agreements for the office units are not relevant. It does not matter how much the office units are paying – this does not impact what the residents will pay.	Why do the residents need daily checks? But the tenant proportions amount to 24% of the Sch.1 expenditure. How has that been calculated by reference to availability, benefit and use, as required by the RICS code? It is relevant. If the commercial tenancy agreements are "all inclusive" rents then there is an obvious incentive to push costs onto the residential service charges. If there is a right to recover a fixed proportion of the service chargeable costs then that must also be relevant to deciding what is "fair" to charge to the leaseholders. In any event, the effect of s.27A(6), LTA 1985 is that the FTT must make a merits decision and that clearly requires it to be in possession of all the relevant evidence	We were told that Mr Goth from MFM attended the building on a daily basis to carry out a number of tasks (see below). Much was made by Ms Mears of the rough sleepers, which Mr Goth dealt with as best he could. For this year the total cost for this is element appears to come to £2,372.04, of which the residential element is £557.66. This does not seem disproportionate when one considers the extent of the tasks undertaken as set out in the MFM letter dated 12 January 2008, which was not challenged. The sum claimed is allowed. The apportionment is not in issue following the joint experts report. We have taken into account Mr Goth's statement at para 3 onwards With the apportionments being agreed and no evidence adduced from the applicants that the costs have been pushed onto the residents this challenge is not understood. The sums claimed have been allocated appropriately are minimal. The leases of the other floors have been supplied and this was not a challenge at the hearing

3.	Electricity Sch.1	£1,067.44	Clifford Talbot's invoices refer to consultancy services but such costs are not service charge categories under clause 5(3). Moreover, the invoices refer to having been instructed on 3.4.12; it would therefore appear that this is a QLTA on which no consultation has taken place. If these costs relate exclusively to the supply of electricity, then two issues arise. First, the tenants do not accept that there is any obligation on them to contribute to such costs under the terms of their leases. Secondly, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.	This relates to the costs of a broker obtaining the best price for electricity to the building including communal parts, which is recoverable as a service charge. It is denied that this is a QLTA, but in any event the contribution from each leaseholder was less than £100. This is a new challenge. This is not the actual cost for the supply of electricity. N/A N/A	This does not address the objection. What clause of the lease gives rise to an obligation to pay these costs? Why is it not a QLTA in light of the evidence as to when the company was instructed?	It is, we understand accepted that this is not QLTA. The lease At 5(3)(d)(ii) allows the employment of other professional persons “as may be necessary or desirable for the proper maintenance safety and administration of the Building”. As a schedule 1 cost thesum if below the QLTA cut off. Mr HEH accepted that the residents had to contribute to the common parts electricity. Therefore this charge is allowable. This is not a charge for electricity consumed

4.	Security Sch.1	£1,297.19	To the extent these costs relate to key holding, the individual occupiers should be responsible for any costs incurred with Mayfair for holding keys.	This is not the cost of key holding for individual occupiers. Only a small part of the total cost is key holding at £42.92 per month.	What key holding is it then?	We were told that G4S hold keys for out of hours access and the sum claimed is, we find reasonable. We were told that MFM do not make any mark up on this fee.

5.	Cleaning Sch.1	£1,316.63	Although the landlord contends that the cleaners are retained on an “ad hoc” basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least 2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.	The contract is terminable on one months' notice and not a QLTA. In any event consultation was followed. If a QLTA then the Landlord reserves its right to make an application for dispensation on, amongst other grounds, that the service has been carried out and no challenge has been made until now and that the tenants were actively involved in the selection of these cleaners. There are many bronze doors around the Property. Each servicing different types of unit. Each invoice identifies the relevant areas and the costs are then attributed to the correct schedule. The cost of cleaning the bronze doors is broken down into the relevant schedules. For example, the door/side screen which relates to the Orwell Studio flat entrance is charged to Schedule 4 only. The doors which serve the fire escapes (common to all) are charged under Schedule 1.	Where is the evidence of consultation? The costs are not proportional to the number of bronze doors. Furthermore, the number of bronze doors has changed. There are approximately 5 bronze doors that Schuh changed out to Aluminium a number of years ago . There are temporary wooden doors as fire escape doors for the last 2.5 years (approx.) so why are we is there still a charge? Furthermore the bronze doors that have the letter box have been in a poor state and not been cleanable and have been most recently covered whilst external works were being carried out as it was blocked by a portaloo	This is not a QLTA as per the agreement at page 1738 of the second bundle. Mr Kelsey (SK) accepted there have been some duplication with Mr Goth but it ensured that the situations requiring cleaning were attended to. The applicants appeared to be content with the service provided. The costs are set out in the schedule of expenditure for this year. No alternative quote is provided, nor indeed any evidence that the costs are excessive. The sums claimed are allowed

6.	M&E Maintenance Contract Sch.1	£7,543.68	The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.	Prior to 2014, M&E services were procured on an ad hoc basis with individual contractors. From 2014, a decision was taken to have one M&E contract for the building in order to simplify and to avoid a blame culture in relation to repairs of elements of the same system. Co-ordination of maintenance routines and attendance of trades and sub-contractors. This is not solely for commercial parts, the plant is used for all types of unit. This is a Schedule 1 item.	What blame culture? How is this relevant to a service charge dispute? As far as the leaseholders are aware, the residential element has a booster pump set which is exclusive to the residential, and lights in two corridors. Why do they need am M&E contract?	The blame culture is not relevant as was, we consider accepted by SK. However, having seen the videos of the building and the substantial plant and equipment an M & E contract appears to be a reasonable step to take. The Karson PPM sheets at p815 onwards of the second bundle sets out the split and was not, so far as we are concerned, challenged. We find this to be a reasonable charge.

7.	M&E Repairs Sch.1	£5,084.89	To the extent these costs include Mayfair's fees for carrying out checks, please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where DVBS was retained to undertake the same checks. To the extent these costs include the monthly M&E Maintenance Contract fees, the lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.	See item 2 above. They don't. This item relates to repairs and not the contract.	See above.	This was not really challenged. The schedule of costs at page 981 of the first bundle sets out the expenses to which there is no specific challenge. Again, an example of the Applicants not following the directions.

8.	Fire Alarm Testing Sch.1	£1,442.04	These costs relate to Mayfair's costs for carrying out fire alarm testing. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where DVBS was retained to undertake the same checks.	Not covered by DVBS. Mayfair Facilities staff have received training in order to be able to carry out a weekly fire alarm testing.	What training? Please provide copies of the relevant training certificates.	A cost of under £400 per annum seems perfectly reasonable in the absence of any differing quotes and is therefore allowed
9.	Door Entry Sch.3	£1,350.26	The Landlord states "they do not have a copy of the contract for the original supply of the door entry system". That suggests that there was a contract. Typically, these contracts are for 10 years. That is consistent with the invoices which run from 2006-2016 before a gap and then a change to a new company. This would be a QLTA on which there has been no consultation.	QLTA irrelevant as the total cost claimed from each residential tenant is less than £100 per annum.	The flats do not contribute on an equal basis. For example, Flat 10, which is the largest flat, contributes 17.75%. That equates to a contribution of £119.84 and therefore above £100 pa. QLTA is therefore relevant.	The costs for the year are £1350.26 but this includes a charges for Anchor Door systems of £130 and works on the power supply of £333.30. If deducted as being one-offs the sum in excess of a QLTA allowance of £100 is de minimis. This work is carried out by DVBS and we are not aware of a challenge that there should have been consultation and that this is QLTA, If it is a QLTA the sums payable for the residential units, save in one case fall below the cut off of £100

10.	Managing Agents Fees Sch.4	£5,280.00	The management agreement with F&T was for an initial term of 3 years commencing 09/04/08. The Landlord failed to consult with the leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum.	Denied. There was no executed contract. This was a rolling contract terminable on reasonable notice. If, which is denied, s.20 applies, then the Landlord reserves its right to make an application for dispensation relying on matters which will include the fact that the leaseholders were consulted and actively involved in the selection of the managing agents. Representatives of the residents were attendant at interviews with the Managing Agents competitively quoting for the work and it is Fresson & Tee's understanding that they were also involved in correspondence at the time. Residents were thus fully aware of what was intended and even obtained their own estimates which were presented to the Landlord and considered at the time.	Back in 2006, the leaseholders were asked about their feelings of appointing a manager and at the time said that they preferred to keep Redevco managing the building. Redevco initially agreed but then said they would appoint a managing agent (*i.e.* F&T). Two of the applicants then obtained quotes from managing agents that were cheaper than F&T yet were told that F&T would be the managing agent. There was no formal or informal consultation. F&T were simply appointed for an initial term of 3 years.	We do not consider this was a QLTA as the agreement although for 3 years was, in our finding determinable on 3 months notice. No complaint has been made until about the fees and the evidence is that Mr HEH was involved in the consultation and indeed put forward his own nominee. It is for the R to decide who to appoint. The annual cost does not seem excessive for a building of this nature in this locality. No alternative costs are advanced by the applicant. We allow the sums claimed

11.	Residential Building Manager Sch.4	£9,668.04	The role of the Building Manager is superfluous in circumstances where the Landlord retains a managing agent and an M&E contractor to carry out inspections/tests. It is also not clear what, if any, qualifications the Building Manager has to carry out such tests. Does Mayfair have appropriate insurance to cover this work? If so, please provide a copy. The Landlord has failed to provide a copy of the contract with the Building Manager who has been retained at the Building for 14 years. Given the presence of the Building Manager since the inception of the Leases, it is believed the contract is a QLTA. The Building Manager's duties are said to include attending upon contractors but typically contractors either have	Denied. Mayfair carry out day to day functions at the Building akin to a porter, such as removing leaseholders' rubbish from the corridors, inspecting the Building for security purposes and testing fire/safety procedures. Mayfair staff have received training from the relevant engineers responsible for the maintenance of the fire alarm/M&E in order to carry out fire alarm testing and visual M&E checks. Specific qualifications are not required to undertake visual inspections and checks only. Mayfair have appropriate insurance in place that covers the role of a facilities manager, such as provided by Mayfair at the Premises. Copy policy attached. Mayfair Facilities Management Combined Liability Insurance 2019-2020.pdf This is a new challenge. There is no written contract and the engagement is terminable on reasonable notice. Mayfair were providing their services to the Property prior to the grant of the residential leases. Further, if it is a QLTA then the Landlord reserves its right to seek dispensation.	Mayfair do not remove rubbish from the corridors, they remove it from a central store. What inspections do they do and what security checks do they do? Please provide details of these qualifications and relevant certificates so as to enable the leaseholders to obtain alternative quotes on a like for like basis. Why are Mayfair based at Redevco Head Office? What is the connection between the companies? The leaseholders have queried Mayfair's involvement for many years and have been repeatedly fobbed off. There has been a previous commitment to retender Mayfair's services but this has not been done	We heard all that was said by Mr Goth concerning his involvement at the building, which was quite far reaching on a low level basis. He was appreciated by Mr HEH and Ms Mears. The total costs for the M & E contractor, managing agent and the building manager are quite high but there is a substantial spread of responsibilities and jn our finding, little overlap

12.	Cleaning Sch.4	£17,865.89	Although the landlord contends that the cleaners are retained on an “ad hoc” basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please explain the costs incurred with Bronze Restorations in relation to “Orwell Studios” and how these costs are apportioned between the various Schedules.	See above under item 5.	See above.	See our earlier response at 5

12.a)	M&E Repair Sch.4	£3,948.96	Please explain the basis on which the M&E costs are allocated between the various Schedules.	This item has not been challenged prior to this schedule. See schedule attached to latest Vertex M & E contract which itemises M & E elements relating only the residential parts of the building and therefore allocated to schedule 4, coloured green on the schedule.  Vertex M&E contract (Schedule Extract).pdf	This suggests that the M&E repairs solely paid by the residents relates to the cleaner's cupboard and the 4th floor electrical room. A charge of almost £4,000 p.a. is excessive	The Karson PPM schedule at page 815 onwards sets this out. This was not challenged. The sum is allowed
13.	Electricity Charges	TBC	The leaseholders do not accept that they are obliged to contribute to these costs and require the landlord to explain how their liability is said to arise. Moreover, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.	Other than electricity for communal use, this has not been charged as a service charge.	But it has nonetheless been charged. Where does the contractual obligation to pay any of these costs arise?	This has been resolved in so far as electricity to the leaseholders' flats is concerned. It was accepted by Mr HEH that the Applicants had to pay for common parts electricity.

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
14.	Site Management Resources Sch.1	£798.26	Please provide a breakdown of the "out of pocket" expenses invoiced by F&T. Please explain the services provided by Classic Security and how the residential leaseholders benefit in respect of the same.	See response for 2014 Classic Security provide out of hours call answering service (helpdesk) for Fresson & Tee to ensure that Tenants and contractors, including Mayfair Facilities, are always able to speak to a person on an out of hours basis, when calls are diverted from main switchboard or mobile phone. Tenants benefit from being able to reach the Managing Agent and to enable escalation of matters needing attention.	Surely this is what Mayfair is meant to be providing as part of their role?	The evidence was that these costs were in addition to MFM and G4S. Our understanding is that they provide cover for F & T. G4S is merely a key holding facility. The cost for this extra security is only just over £15 per week and would appear to cover hours after MFM are available. It seems reasonable and we allow it

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
15.	Health & Safety Sch.1	£3,221.16	These costs relate to Mayfair's costs for carrying out testing and reviewing Fire Safety documents. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where DVBS was retained to undertake the same checks. Moreover, some of these costs must be attributable to the commercial parts of the building and the tenants require it to be shown that there was a proper allocation between the residential and commercial parts. To this end, please provide a copy of the tenancy agreements for the office units.	See response for 2014	See above.	
16.	Security Sch.1	£1,516.62	To the extent these costs relate to key holding, the individual occupiers	See response for 2014	See above.	

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			should be responsible for any costs incurred with Mayfair for holding keys.			
17.	Cleaning Sch.1	£2,105.61	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least 2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.	See response for 2014	See above.	
18.	M&E Maintenance Contract Sch.1	£11,315.52	The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be	See response to 2014	See above.	

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			attributed to the commercial tenants.			
19.	M&E Repairs Sch.1	£3,593.63	To the extent these costs include Mayfair's fees for carrying out checks, please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where DVBS/Polyteck was retained to undertake the same checks. To the extent these costs include the monthly M&E Maintenance Contract fees, the lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the	See response to 2014	See above.	

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			commercial parts, then those costs should be attributed to the commercial tenants.			
20.	Fire Alarm Testing Sch.1	£1,442.09	These costs relate to Mayfair's costs for carrying out fire alarm testing. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where DVBS was retained to undertake the same checks.	See response to 2014	See above.	
21.	Door Entry Sch.3	£1,630.44	The Landlord states "they do not have a copy of the contract for the original supply of the door entry system". That suggests that there was a contract. Typically, these contracts are for 10 years. That is consistent with the invoices which run from 2006-2016 before a gap and then a change to a	This was not a QLTA. Even if it were then only some of the charges are marginally over £100.	See above.	

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			new company. This would be a QLTA on which there has been no consultation.			
22.	Lift Repairs Sch.3	£5,719.90	The contract with Otis was for an initial term of 5 years commencing on or around March 2007 and renewed every 5 years thereafter. The Landlord failed to consult with the leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum.	Not an issue raised prior to this schedule. The service contract was entered into with the original contractor that installed the lifts prior to the residential leases being granted. This enabled the Landlord to take advantage of the necessary warranties etc. The Landlord is, however, prepared to concede that this is a QLTA on the available evidence and reserves its right to seek dispensation.	Unless and until dispensation is granted, the service charge position of the leaseholders therefore needs to be updated to reflect this concession and the appropriate credits made to the individual service charge accounts.	Noted

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
23.	Managing Agents Fees Sch.4	£5,280.00	The management agreement with F&T was for an initial term of 3 years commencing 09/04/08. The Landlord failed to consult with the leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum.	See response to 2014	See above.	

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
24.	Residential Building Manager Sch.4	£9,958.08	The role of the Building Manager is superfluous in circumstances where the Landlord retains a managing agent and an M&E contractor to carry out inspections/tests. It is also not clear what, if any, qualifications the Building Manager has to carry out such tests. Does Mayfair have appropriate insurance to cover this work? If so, please provide a copy. The Landlord has failed to provide a copy of the contract with the Building Manager who has been retained at the Building for 14 years. Given the presence of the Building Manager since the inception of the Leases, it is believed the contract is a QLTA. The Building Manager's duties are said to include attending upon	See response to 2014	See above.	

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			contractors but typically contractors either have independent access via a fob or are giving access by one of the residents. The Building Manager together with the managing agent and the M&E Contractor cost the residential lessees in excess of £25,000 per annum in simply supervising the Building.			
25.	Cleaning Sch.4	£18,312.56	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation.	See response to 2014	See above.	

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.			
26.	M&E Repair Sch.4	£5,923.44	Please explain the basis on which the M&E costs are allocated between the various Schedules.	See response to 2014	See above.	
27.	M&E Repairs Sch.4	£3,183.20	This appears to be qualifying work for which there was no statutory consultation.	This item was not charged.		
28.	Electricity Charges	TBC	The leaseholders do not accept that they are obliged to contribute to these costs and require the landlord to explain how their liability is said to arise. Moreover, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular	See response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2015

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			figures.			

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
29	Site Management Resources Sch.1	£1,177.04	Please provide a breakdown of the "out of pocket" expenses invoiced by F&T. Please explain the services provided by Classic Security and how the residential leaseholders benefit in respect of the same.	see response to 2014/5		
30	Health & Safety Sch. 1	£2,377.04	These costs relate to Mayfair's costs for carrying out testing and reviewing Fire Safety documents. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks. Moreover, some of these costs must be attributable to the commercial parts of the building and the tenants require it to be shown that there was a proper allocation between the residential and commercial parts. To this end, please provide a copy of the tenancy agreements for	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			the office units.			
31	Security Sch.1	£2,419.87	To the extent these costs relate to key holding, the individual occupiers should be responsible for any costs incurred with Mayfair for holding keys.	see response to 2014		
32	Cleaning Sch.1	£1,438.81	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.	see response to 2014		
33	M&E Maintenance Contract Sch.1	£11,227.38	The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			be attributed to the commercial tenants.			
34	M&E Repairs Sch.1	£1,508.55	To the extent these costs include Mayfair's fees for carrying out checks, please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks. To the extent these costs include the monthly M&E Maintenance Contract fees, the lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.	see response to 2014 The Landlord is not clear where reference to "comprehensive cover of £500" is derived from. The Polyteck contract provides for £300 per reactive task on a semi-comprehensive basis with exceptions for	The three contractors' tenders included in the section 20 consultation	Although produced late in the day the Maintenance Tender report from Karsons Consulting dated February 2016 confirms

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			Please provide evidence and a copy of the contractor's electronic reporting to evidence how the comprehensive cover of £500 was applied to works undertaken by Polyteck.	certain items.	process, quoted a price (i) without comprehensive cover (ii) with £500 cover and (iii) with fully comprehensive cover. DVBS provided the lowest quote without cover (i). Polyteck was selected as the lowest quote based on £500 cover (ii). But Polyteck's contract only provided for £300 cover. The actual cover subsequently given by Polyteck was not in accordance with the tender process and it remains to be seen whether DVBS would have provided a similar/lower quote had they been asked to quote for £300 cover.	the semi comprehensive cover figure of £300
35	Fire Alarm Testing Sch.1	£1,442.04	These costs relate to Mayfair's costs for carrying out fire	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			alarm testing. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where DVBS/Polyteck was retained to undertake the same checks.			
36	Major Works Sch.1	£79,200.03	The damage to the asphalt roof was as a result of the installation of decking by the landlord. It is unreasonable for the lessees to have to pay for remedial works, as a result of the landlord's defective/negligent design.	Denied. In any event, this is no reason for not paying. The decking was part of the original construction/development when the Property was first converted and was not installed retrospectively. There was a 10 year warranty to cover latent defects when the Tenants first bought the flats. The defects to the asphalt arose at the very end of the 10 year period. A claim was made using Flat 2 as a sample claim to insurers who refused to cover it. This was appealed through the insurers' appeals process, but was rejected. The Landlord has taken all reasonable steps to attempt to get the costs of remedial works discharged from third parties before ultimately having to recharge the cost to the leaseholders. See attached	The insurance rejected it as it was a defective design. The 15.1.16 consultation notice explains that the decking supports have punctured the roofing material. Liability sits with the party that commissioned such defective decking	Please see the decision on this issue

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			Please provide a copy of the Stage 2 consultation notice.	 s.20 Notice of intention roof repairs.pdf  s.20 Statement of reasons.pdf  s.20 Statement of estimates.pdf		
37	Lift Sch.3	£9,423.24	The contract with Otis was for an initial term of 5 years commencing on or around March 2007 and renewed every 5 years thereafter. The Landlord failed to consult with the leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum. In any event, Otis' invoice dated 01/04/14 in the sum of £5,473.58 is subject to section 20B.	see response to 2014 The Landlord paid the invoice on 7th February 2017 upon receipt of invoice on 18th January 2017. S.20B does not apply.	The invoice is dated 01/04/14. It is denied that it was received on 18/01/17.	The invoice dated 1.4.14 was, on the evidence available to us not produced to the Respondents until January 2017. We have dealt with this in the decision and in respect of this invoice we have found that 20B does not apply and the cost of £5473.58 is recoverable
38	Managing Agents Fees Sch.4	£5,280.00	The management agreement with F&T was for an initial term of 3 years commencing 09/04/08. The Landlord failed to consult with the	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum.			
39	Residential Building Manager Sch.4	£10,107.36	The role of the Building Manager is superfluous in circumstances where the Landlord retains a managing agent and an M&E contractor to carry out inspections/tests. It is also not clear what, if any, qualifications the Building Manager has to carry out such tests. Does Mayfair have appropriate insurance to cover this work? If so, please provide a copy. The Landlord has failed to provide a copy of the contract with the Building Manager who has been retained at the Building for 14 years. Given the presence of the Building Manager since the inception of the Leases, it is believed the contract is a QLTA. The Building Manager's duties are said to include attending	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			upon contractors but typically contractors either have independent access via a fob or are giving access by one of the residents. The Building Manager together with the managing agent and the M&E Contractor cost the residential lessees in excess of £25,000 per annum in simply supervising the Building.			
40	Cleaning Sch.4	£19,007.01	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation.	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2016

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.			
41	Electricity Charges	TBC	The leaseholders do not accept that they are obliged to contribute to these costs and require the landlord to explain how their liability is said to arise. Moreover, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
42.	Site Management Resources Sch.1	£411.24	Please explain the services provided by Classic Security and how the residential leaseholders benefit in respect of the same.	see response to 2015		
43.	Energy Procurement Consultancy Sch.1	£1,109.15	Clifford Talbot's invoices refer to consultancy services but such costs are not service charge categories under clause 5(3). Moreover, the invoices refer to having been instructed on 3.4.12; it would therefore appear that this is a QLTA on which no consultation has taken place. If these costs relate exclusively to the supply of electricity, then two issues arise. First, the tenants do not accept that there is any obligation on them to contribute to such costs under the terms of their leases. Secondly, the landlord has already admitted that the	see response to Electricity Schedule 1 for year end 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.			
44.	Security Sch.1	£3,156.61	The lessees should not be responsible of the costs of Mayfair attending as a result of intruder alarms being triggered on the commercial/retail parts. Those costs should be borne by the individual tenant.	These costs relate to attendance to reset the security alarm covering the common parts, such as Oxford Street and Market Place fire doors from which the residents gain benefit, and undertaking patrols following such activations. The commercial Tenants each have their own independent security alarms and keyholder arrangements as would be expected.	The residents do not use the Oxford Street fire escape. They have access to it via the bin storage, but in recent correspondence the new managing agents have said that this is not a fire escape	KS said in evidence that there are two fire doors one in Market Place and Oxford Street which can be reached from the 4/5th floors and that the Applicants can use them as a fire escape. This seemed consistent with the video evidence. We accept this evidence and allow this cost

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			To the extent these costs relate to key holding, the individual occupiers should be responsible for any costs incurred with Mayfair for holding keys.	see response to 2014		
45.	Cleaning Sch.1	£1,742.58	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.	see response to 2014		
46.	M&E Maintenance Contract Sch.1	£11,318.49	The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.			
47.	Fire Alarm Testing Sch.1	£1,442.04	These costs relate to Mayfair's costs for carrying out fire alarm testing. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks.	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
48.	Major Works Sch.1	£367,995.20	There is no contractual right to demand a service charge contribution towards a reserve fund. The majority of this sum appears to relate to the surveyor's fee for advising on the proposed works. That advice is so integral to the works themselves as to amount to qualifying work (for which there was no consultation): *Marionette Ltd v Visible Information Packaged Systems Ltd* [2002] EWHC 2546 (Ch), The costs incurred with Lighthouse were effectively for advising on the same set of roof repairs. It is unreasonable for the lessees to have to pay twice because the surveyor failed to correctly prepare the	This was not a reserve fund amount but anticipated costs in the forthcoming service charge year. This was not the majority of the sum. The surveying costs were separate from the works themselves. The costs of these fees were reasonably incurred. By reference to the Sept and Dec 2017 invoices, the cost increased from £374,000 to £554,000. This is because the budget was originally based on Lighthouse's pre-tend budget which was then later amended following a tender exercise. The cost was amended again due to the need to adjust the scaffold design.	The work was not done during the 2017 or 2018 period yet the money has been retained – that is not permitted by the lease. Why do the leaseholders have to pay again because the scaffolding design was incorrect? Given that the original scaffolding design was incorrect, why are the same contractors being used again?	This appears to be an accrual not reserve fund monies as evidenced by the schedule of costing at pages 1012, 1025-6 and 1038 The surveyors fees are Lighthouse and their invoices are At pages 961 – 962 of the second bundle. The later invoice dated 19 December 2017 gives credit for the earlier invoice. There does not seem to be duplication, just a higher contract price which impacts on the 10% fee chargeable This is not a service charge issue. There appears to have been a change in the contract.

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			specification of works and it subsequently needed amending. Further, the invoices include the cost of the surveyor inspecting the property, which would not have needed to have been down twice.	The sum was not paid twice. The lower sum was part payment at the lower original estimate and the second larger sum was the final balancing payment at the higher price. The invoices make it clear that the initial payment was deducted from the amount due from the subsequent demand. It was always a % of the total cost.		
49.	Managing Agents Fees Sch.4	£5,280.00	The management agreement with F&T was for an initial term of 3 years commencing 09/04/08. The Landlord failed to consult with the leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum.	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
50.	Residential Building Manager Sch.4	£10,107.36	The role of the Building Manager is superfluous in circumstances where the Landlord retains a managing agent and an M&E contractor to carry out inspections/tests. It is also not clear what, if any, qualifications the Building Manager has to carry out such tests. Does Mayfair have appropriate insurance to cover this work? If so, please provide a copy. The Landlord has failed to provide a copy of the contract with the Building Manager who has been retained at the Building for 14 years. Given the presence of the Building Manager since the inception of the Leases, it is believed the contract is a QLTA. The Building Manager's duties are said to include attending upon contractors but typically	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			contractors either have independent access via a fob or are giving access by one of the residents. The Building Manager together with the managing agent and the M&E Contractor cost the residential lessees in excess of £25,000 per annum in simply supervising the Building.			
51.	Cleaning Sch.4	£19,724.13	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation.	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.			
52.	M&E Maintenance Contract Sch.4	£2,795.70	The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants. Please explain how Polyteck's costs are allocated between the various Schedules.	see response to 2014		
53.	M&E Repairs Sch.4	£4,312.08	The consultation process was a sham in circumstances where Polyteck managed the tender process and then won the contract by	Polyteck did not win the bid. It was sub-contracted. The choice of sub-contractor was achieved through the consultation process.	Then where is the invoice from the successful contractor?	There was consultation under a QLTA with Polyteck. It is accepted that under the consultation regulations the name of the contractor does not need to be included. The consultation document is at page 546 of the first

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			putting in the lowest bid. To the extent these costs include the monthly M&E Maintenance Contract fees, the lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants. Please provide evidence and a copy of the contractor's electronic reporting to evidence how the comprehensive cover of £500 was applied to works undertaken by Polyteck.	N/A See item 34 for 2016.		bundle and an opportunity to inspect was provided. No complaint was made at the time. We are satisfied that the s20 procedure was followed and the sum claimed is allowed

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
54.	General Repairs Sch.4	£1,540.00	The cost of replacing four light fittings in the lift lobby entrance in the sum of £1,540 is unreasonable in circumstances where it involved less than 1 hour's work and a stepladder. Those works could have been undertaken by the Building Manager.	The figure of £1,540 is an accrual (provision) in the expenditure to 31.12.2017. Invoice 123461 is dated 23.07.2018. There is also a credit note in relation to waiving cost of hire of a Tower scaffold. So the actual total is £1,250. The replacement refers to 4 high level light fittings, 3 of which had failed. It was not known what state the fittings/wiring were in but there was expected deterioration to fittings and cables. Advice at the time was to swap them for LED fittings. The repairs did not merely relate to changing a light bulb but to changing the whole fitting. These works were delayed at the request of the residents in response to the notice of intention due to residents' representatives Mr Lanitis and Mr El-Hadidi stating the residents wanted to refurbish the common parts and were to engage an interior		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
				designer.		
			In addition, the costs were incurred before the Stage 2 consultation notice was issued to the lessees on 26/02/18. Further, the consultation process was a sham in circumstances where Polyteck managed the tender process and then won the contract by putting in the lowest bid.	The actual cost charged to the Tenants was below the major works threshold. See comment above in relation to the role of Polyteck acting as a contract administrator.		
55.	Electricity Charges	TBC	The leaseholders do not accept that they are obliged to contribute to these costs and require the landlord to explain how their liability is said to arise. Moreover, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2017 [Landlord: Tenants appear to have the wrong figures for expenditure for this year]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			accuracy of any particular figures.			

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
56.	Site Management Resources Sch.1	£794.28	Please explain the services provided by Classic Security and how the residential leaseholders benefit in respect of the same.	see response to 2014/5		
57.	Health & Safety Sch.1	£2,443.20	To the extent these costs relate to Mayfair's costs for carrying out testing and reviewing Fire Safety documents. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks. It is also possible that these checks are only necessary because of the commercial parts but that would require expert evidence. There is also some doubt as to how the costs are allocated between resi and commercial.	see response to 2014		
58.	Energy Procurement Consultancy Sch.1	£1,130.76	Clifford Talbot's invoices refer to consultancy services but such costs are not service charge categories under clause 5(3). Moreover, the invoices refer to having been instructed on 3.4.12;	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			it would therefore appear that this is a QLTA on which no consultation has taken place. If these costs relate exclusively to the supply of electricity, then two issues arise. First, the tenants do not accept that there is any obligation on them to contribute to such costs under the terms of their leases. Secondly, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.			
59.	Security Sch.1	£553.65	To the extent these costs relate to key holding, the individual occupiers should be responsible for any costs incurred with Mayfair for holding keys.	see response to 2014		
60.	Cleaning Sch.1	£1,812.74	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			the costs of cleaning the bronze doors are allocated between the various Schedules.			
61.	M&E Maintenance Contract Sch.1	£11,732.28	The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.	see response to 2014		
62.	Fire Alarm Testing Sch.1	£1,485.36	These costs relate to Mayfair's costs for carrying out fire alarm testing. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks.	see response to 2014		
63.	Major Works Sch.1	£260,517.24	There is no contractual right to demand a service charge contribution towards a reserve fund. Please explain why it was necessary to redesign the	This was not a demand for contribution to a reserve fund but for anticipated expenditure in the forthcoming service charge year. This is not a challenge,	As previous year	

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			scheme of scaffolding and to cost for alternative scaffold options.	but: It was necessary because the weight of scaffold needed to carry out work to the whole building (Ground to 4th floors) exceeded the bearing capacity of the footway. The redesign related to investigation of scaffold being hung from and attached to the frame of the building.		
64.	Lift Repairs Sch.3	£7,703.64	Given that the lifts are separately accessed by the office and residential tenants, please clarify which invoices relate to the office lift and which concern the residential lift.	Otis RTS 11064530 30/01/18 – Office Otis RTS 1108523 07/03/18 LH Lift D2313 – Office Reliable NV109165 26/04/18 – Residential NV109166 26/04/18 – Office NV109179 26/04/18 – Both NV109621 2906/18 – Both NV109858 30/07/18 – Residential NV110326 27/09/18 –		

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
				Both NV110625 02/11/18 – Residential		
65.	Managing Agents Fees	£6,744.00	The management agreement with F&T was for an initial term of 3 years commencing 09/04/08. The Landlord failed to consult with the leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum.Further, and in the alternative, the management fees were increased by over 27% from the previous year. This increase was unreasonable given the RPI was only 3.3%. Why has VAT been charged for the first time this year?	see response to 2014 Prior to 2016, management fees had not been increased annually in line with the original proposal. The management fee was increased by change in RPI between December 2007 and December 2016. As a result, management fees are currently at the level envisaged by the management contract VAT has always been charged. On the 2018 expenditure list the invoices appear to have been listed net Vat & Gross and in 2017 expenditure list, Gross only.	It is not accepted that there is a right to "load" 9 years of RPI like this.	We have dealt with this in the decision. The sum is allowed
66.	Residential Building Manager Sch.4	£10,410.60	The role of the Building Manager is superfluous in circumstances where the Landlord retains a managing agent and an M&E	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			contractor to carry out inspections/tests. It is also not clear what, if any, qualifications the Building Manager has to carry out such tests. Does Mayfair have appropriate insurance to cover this work? If so, please provide a copy. The Landlord has failed to provide a copy of the contract with the Building Manager who has been retained at the Building for 14 years. Given the presence of the Building Manager since the inception of the Leases, it is believed the contract is a QLTA. The Building Manager's duties are said to include attending upon contractors but typically contractors either have independent access via a fob or are giving access by one of the residents. The Building Manager together with the managing agent and the M&E Contractor cost the residential lessees in excess of £25,000 per annum in simply	See above re. VAT.		

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			supervising the Building. Why has VAT been charged for the first time this year?			
67.	Cleaning Sch.4	£19,071.92	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.	see response to 2014		
68.	M&E Contract Sch.4	£2,897.94	Please set out the services/tasks specifically allocated to the residential lessees in respect of these costs.	See attached Vertex M&E contract (Schedule Extract).pdf	Same as item 12(a)	See before
69.	Electricity Charges	TBC	The leaseholders do not accept that they are obliged to contribute to these costs and require the landlord to explain how their liability is said to arise. Moreover, the landlord has already admitted that the electricity metering is incorrectly	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2018 [Landlord comment: again the tenants appear to have different figures from that charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			calibrated and the tenants require the landlord to prove the accuracy of any particular figures.			

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
70.	Site Management Resources Sch.1	£610.66	Please explain the services provided by Classic Security and how the residential leaseholders benefit in respect of the same.	see response to 2014		
71.	Health & Safety Sch.1	£2,516.49	These costs relate to Mayfair's costs for carrying out testing and reviewing Fire Safety documents. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks. Moreover, some of these costs must be attributable to the commercial parts of the building and the tenants require it to be shown that there was a proper allocation between the residential and commercial parts. To this end, please provide a	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			copy of the tenancy agreements for the office units.			
72.	Electricity Sch.1	£162.51	Please explain what services Essential Services provide to the Building and provide a copy of the supporting invoice. If these costs relate exclusively to the supply of electricity, then two issues arise. First, the tenants do not accept that there is any obligation on them to contribute to such costs under the terms of their leases. Secondly, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.	Essential services comprise items such as fire alarm system, Firefighting (Residential) lift, backup generator for sprinkler system providing fire protection to the building. Consumption is to do with the essential services (above) and is covered by clause 5 (3) (f).		
73.	Energy Procurement	£1,550.00	Clifford Talbot's invoices refer to consultancy	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
	Sch.1		services but such costs are not service charge categories under clause 5(3). Moreover, the invoices refer to having been instructed on 3.4.12; it would therefore appear that this is a QLTA on which no consultation has taken place. If these costs relate exclusively to the supply of electricity, then two issues arise. First, the tenants do not accept that there is any obligation on them to contribute to such costs under the terms of their leases. Secondly, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.			
74.	Security Sch.1	£1,235.38	The lessees should not be responsible of the costs of Mayfair attending	see response to 2017		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			as a result of intruder alarms being triggered on the commercial/retail parts. Those costs should be borne by the individual tenant.			
75.	Security Keyholding Sch.1	£546.48	To the extent these costs relate to key holding, the individual occupiers should be responsible for any costs incurred with Mayfair for holding keys.	see response to 2014		
76.	Cleaning Sch.1	£2,070.90	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
77.	M&E Maintenance Contract Sch.1	£12,068.28	It was unreasonable and reckless for the Landlord to continue to instruct Polyteck in circumstances where it was public knowledge that its directors had been charged with fraud and bribery and the lessees had previously raised concerns as to Polyteck's pricing and work methods. The director was subsequently found guilty and sentenced to 9 months in prison. The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.	This is not a challenge under s.19. In any event, Polytek were contracted with 4 years prior and since the allegations became public steps were taken to re-tender the contract, whilst maintaining continuity of service. see response to 2014		
78.	Fire Alarm Testing Sch.1	£1,529.88	These costs relate to Mayfair's costs for carrying out fire alarm	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			testing. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks.			
79.	Major Works Sch.1	£35,435.90	Please provide a copy of the invoice relating to external repairs and decoration together with a copy of the JCT Contract.	See invoice attached.  Pavehall Invoice 12472.pdf This is not a challenge, there is no basis given for seeking the JCT contract and this item was not challenged in the year end 2019 list of items in issue in the application.		
80.	Major Works Sch.1	£1,475	The cost of Lighthouse's survey is unreasonable in circumstances where it failed to adequately report on the defects and an alternative report had to be procured.	This charge is for the year end 2018. This relates to water ingress to the vaults. The alternative report was commissioned by the Tenants and it is not accepted that Lighthouse's survey was inadequate. The two reports provided differing		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
				opinions as to the remedial works . These works are going ahead but in light of the fact that damage has only been occasioned to commercial parts it has been decided to allocate the costs of this entirely to Schedule 2. The residential tenants will be credited accordingly.		
81.	Lift Repairs Sch.3	£3,080.00	Given that the lifts are separately accessed by the office and residential tenants, please clarify which invoices relate to the office lift and which concern the residential lift.	Reliable NV111059 07/01/19 – Both Mtce NV111837 18/04/19 – Both Mtce NV111989 14/05/19 – Office and recharged directly to Urban Outfitters. NV112444 15/07/19 – Both Mtce NV113428 07/11/19 – Both Mtce NV113132 03/11/19 – Both Mtce		
82.	Managing Agents Fees Sch.3	£6,679.20	The management agreement with F&T was for an initial term of 3 years commencing 09/04/08. The Landlord failed to consult with the	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			leaseholders pursuant to section 20 LTA 1985 and is therefore limited to recovering £100 per annum.			
83.	Residential Building Manager Sch.4	£10,772.96	The role of the Building Manager is superfluous in circumstances where the Landlord retains a managing agent and an M&E contractor to carry out inspections/tests. It is also not clear what, if any, qualifications the Building Manager has to carry out such tests. Does Mayfair have appropriate insurance to cover this work? If so, please provide a copy. The Landlord has failed to provide a copy of the contract with the Building Manager who has been retained at the Building for 14 years. Given the presence of the Building Manager since the inception of the Leases, it is believed the contract is a QLTA.	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			The Building Manager's duties are said to include attending upon contractors but typically contractors either have independent access via a fob or are giving access by one of the residents. The Building Manager together with the managing agent and the M&E Contractor cost the residential lessees in excess of £25,000 per annum in simply supervising the Building.			
84.	Cleaning Sch.4	£18,810.82	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of	see response to 2014		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			cleaning the bronze doors are allocated between the various Schedules.			
85.	M&E Contract Sch.4	£2,980.98	Please set out the services/tasks specifically allocated to the residential lessees in respect of these costs.	see response to 2018		
86.	Electricity Charges	TBC	The leaseholders do not accept that they are obliged to contribute to these costs and require the landlord to explain how their liability is said to arise. Moreover, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.	see response to 2014		
	Y/E Shortfall	£30,500.00	Please explain why there is a £30,500 shortfall and why the major works adjustment under Schedule 1 is nearly £120,000 less than anticipated.	This is neither a challenge, nor a charge There has been an adjustment in light of the Pavehall works. Reflects Accruals and Prepayments due to changes in the cost of		

DISPUTED SERVICE CHARGES Y/E 31.12.2019 [Landlord Comment: again the Tenants have different figures from those charged]

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
				the external repairs programme contracted to Pavehall arising from original scope of work for which tenders were obtained, reduced scope of work which was re-tendered, for which lower costs were obtained. Pavehall are the residents' nominated contractor.		

DISPUTED SERVICE CHARGES Y/E 31.12.2020

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
87.	Site Management Resources Sch.1	£1,236.00	Please explain the services provided by Classic Security and how the residential leaseholders benefit in respect of the same.	see response to 2015		
88.	Health & Safety Sch.1	£2,222.00	These costs relate to Mayfair's costs for carrying out testing and reviewing Fire Safety documents. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks. Moreover, some of these costs must be attributable to the commercial parts of the building and the tenants require it to be shown that there was a proper allocation between the residential and commercial parts. To this end, please provide a copy of the tenancy	see response to 2014		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			agreements for the office units.			
89.	Energy Procurement Sch.1	£2,172.00	Clifford Talbot's invoices refer to consultancy services but such costs are not service charge categories under clause 5(3). Moreover, the invoices refer to having been instructed on 3.4.12; it would therefore appear that this is a QLTA on which no consultation has taken place. If these costs relate exclusively to the supply of electricity, then two issues arise. First, the tenants do not accept that there is any obligation on them to contribute to such costs under the terms of their leases. Secondly, the landlord has already admitted that the electricity metering is incorrectly calibrated and the tenants require the landlord to prove the accuracy of any particular figures.	see response to 2014		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
90.	Security Sch.1	£4,894.00	To the extent these costs relate to Mayfair attending as a result of intruder alarms, the lessees should not be responsible for the same. Those costs should be borne by the individual tenant. To the extent these costs relate to key holding, the individual occupiers should be responsible for any costs incurred with Mayfair for holding keys.	see response to 2017 see response to 2014		
91.	Cleaning Sch.1	£2,995.00	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on which the costs of cleaning the bronze doors are allocated between the various Schedules.	see response to 2014		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
92.	M&E Maintenance Contract Sch.1	£15,624.00	The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.	see response to 2014		
93.	Fire Alarm Testing Sch.1	£870.00	To the extent these costs relate to Mayfair's costs for carrying out fire alarm testing. Please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Vertex was retained to undertake the same checks.	see response to 2014		
94.	Major Works Sch.1	£30,694.00	Please clarify what works these sums have been budgeted for.	CCTV Lighting Smoke Vent Automation	Under what lease clauses are these improvements chargeable?	This was not pursued
95.	Lift Repairs Sch.3	£5,400.00	Given that the lifts are separately accessed by the office and residential tenants, please clarify	Reliable Elevators contract £3000 & Lift repairs allowance of		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			which invoices relate to the office lift and which concern the residential lift.	£1,500 = £4,500+ Vat £900 = £5,400. The Invoices are for both office and residential.		
96.	Residential Building Manager Sch.4	£10,976.00	The role of the Building Manager is superfluous in circumstances where the Landlord retains a managing agent and an M&E contractor to carry out inspections/tests. It is also not clear what, if any, qualifications the Building Manager has to carry out such tests. Does Mayfair have appropriate insurance to cover this work? If so, please provide a copy. The Landlord has failed to provide a copy of the contract with the Building Manager who has been retained at the Building for 14 years. Given the presence of the Building Manager since the inception of the Leases, it is believed the contract is	see response to 2014		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			a QLTA. The Building Manager's duties are said to include attending upon contractors but typically contractors either have independent access via a fob or are giving access by one of the residents. The Building Manager together with the managing agent and the M&E Contractor cost the residential lessees in excess of £25,000 per annum in simply supervising the Building.			
97.	Cleaning Sch.4	£21,408.00	Although the landlord contends that the cleaners are retained on an "ad hoc" basis, the evidence shows that the same firm have provided cleaning services – and invoiced each month – since at least2009. The tenants contend that this is a QLTA on which there has been no consultation. Please clarify the basis on	see response to 2014		

	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			which the costs of cleaning the bronze doors are allocated between the various Schedules.			
98.	M&E Maintenance Contract Sch.4	£3,110.00	This is a QLTA on which there was no consultation. The contract is for 364 days and can be terminated after that by either party giving 60 days' notice. Applying *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102, this is a QLTA .	This issue has not been raised prior to this Schedule. The Landlord is unable to identify the sum referred to in the year end 2020 expenditure. In terms of the M&E Maintenance Contract, consultation was followed. Consultation notices were issued and a covering letter with the Notice of Intention. Residents also received a full copy of Karsons Consulting tender report with the statement of estimates. Accordingly the		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			The lessees were not required to contribute to an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants.	residents are fully aware and also nominated contractors who were approached for prices. see response to 2014		
99.	M&E Repairs Sch.4	£1,752.00	To the extent these costs include Mayfair's fees for carrying out checks, please provide evidence that the Building Manager is qualified to undertake such checks and explain why these checks were necessary in circumstances where Polyteck was retained to undertake the same checks. To the extent these costs include the monthly M&E Maintenance Contract fees, the lessees were not required to contribute to	see response to 2016		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			an M&E Contract before 2014. The landlord is required to explain why these costs began to be incurred in 2014. If, as the tenants expect, it was because of the commercial parts, then those costs should be attributed to the commercial tenants. Please provide evidence and a copy of the contractor's electronic reporting to evidence how the comprehensive cover of £500 was applied to works undertaken by Polyteck.			
100.	Electricity Charges	TBC	The leaseholders do not accept that they are obliged to contribute to these costs and require the landlord to explain how their liability is said to arise. Moreover, the landlord has already admitted that the electricity metering is incorrectly calibrated and	see response to 2014		

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	Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Tribunal
			the tenants require the landlord to prove the accuracy of any particular figures.			