FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UN/LSC/2018/0035**
Property	**:**	**The Old Post Office, 2 Union Crescent, Margate, Kent CT19 1NR**
Applicants	**:**	**Lessees: Ross Stewart (F2), Pat Elliott (F1) Graham Godfrey & Jessica Berry (F3), Anthony Psaila (F4), Michelle Barry (F5), Coilin Staplehurst (F6), John-Paul Cooke (F7), Karen Pack-Lum & Jonathan Agrippa (F8)** **Former lessees: Paul & Jessica Goodman (F3), Claire Dickinson (F5)**
Representative	**:**	**Jacolyn Daly (lay representative) & Ross Stewart**
Respondent	**:**	**Brelis Limited**
Representative	**:**	**Mr Buckland (for part of the hearing)**
Type of Application	**:**	**Liability to pay and reasonableness of service charges**
Tribunal Members	**:**	**Judge Paul Letman** **Mr Richard Athow FRICS** **Mr Peter Gammon MBE**
Date and venue of	**:**	**28 November 2018**
Hearing	**:**	**Margate Magistrates Court**
Date of Decision	**:**	**10 January 2019**

DECISION WITH REASONS

Introduction

1. By an application dated 07 April 2018 the Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to whether certain costs and charges claimed by the Respondent, their landlord, are payable as service charges. The years in issue are 2016/17 and 2017/18 and the disputed charges set out in a schedule dated 24 March 2017 ('the Schedule').

2. At an oral case management hearing by conference call on 20 May 2018 (attended by Mr Ross Stewart for the Applicants) directions were made for the further conduct of the application. These included provision for disclosure, service by the Applicants of the Schedule (setting out the items in dispute and the reasons why each amount is disputed) and a statement of case with any witness statements, and in turn completion of the Schedule by the Respondent and submission of a statement of case by it. The Applicants complied with the directions, the Respondent did not.

3. In accordance with the directions which set a trial window of 19 November 2018 to 03 December 2018, the application was duly listed for 2 days commencing 28 November 2018; later reduced to a one day hearing. Thus it was that this application came on for hearing before this tribunal on 28 November 2018 at Margate Magistrates Court.

Adjournment

4. However, on the day preceding the hearing Mr Buckland, one of the 2 directors of the Respondent, emailed the tribunal indicating that he was unwell and unable to attend and requesting an adjournment of the hearing. Although no indication was ever given as to when he might be available in due course. At that stage it was too late to consider an application to adjourn and arrangements were made for Mr Buckland to telephone the tribunal at the commencement of the hearing (in Margate magistrate court) to apply to adjourn if he wished.

5. Accordingly, following the inspection of the premises, at the outset of the hearing Mr Buckland (who was at home) joined the hearing by telephone conference. Having established that Mr Buckland could both hear what was said and be heard in the court room he was invited to make an application to adjourn if he wished or instead to remain on the telephone and participate in the hearing by that means (with the Applicants presenting their case item by item and him then making any comments that he wished as each item was dealt with).

6. Mr Buckland explained that whilst he was unwell, his preference was that the matter should be heard and that with the opportunity to participate offered by the telephone conference call he would not now pursue his application to adjourn. On this basis the hearing commenced, with the Applicants introducing their case by reference to their written statement of case.

7. Unfortunately, however, over the course of the next 20 minutes it became apparent that Mr Buckland was intent on disrupting the proceedings by multiple interventions, refusing to hear or adhere to the Tribunal's strictures that he should let the Applicants speak first and await the Tribunal's invitation to respond. Mr Buckland then claimed that he had not understood that the hearing was to proceed in this way and he would be required to remain on the telephone for any more than a few minutes, that he couldn't manage this and now wanted an adjournment.

8. The Tribunal accordingly invited Mr Buckland to make his application to adjourn. Mr Buckland referred to the note dated 27 November 2018 from his GP stating that he was currently receiving treatment for sciatic pain for the last 6 weeks, that he was taking a lot of medication to control the pain 'some of which is making him drowsy.' The note concluded that he is currently not fit to attend court or travel.

9. When asked by the Tribunal why the Respondent could not be represented by Mr John Rose, his fellow director, he stated that Mr Rose was not sufficiently conversant with the matter and was not in a position to act. When asked why the Respondent did not seek to have its previously instructed solicitors represent it or instruct counsel Mr Buckland said that the Respondent was not willing to pay those sort of fees.

10. The Applicants opposed any adjournment. They submitted that the telephone conference facility was working so that Mr Buckland could continue 'to attend' the hearing by telephone if he wished. That it was clear from the course of events so far this morning that this was feasible and that he was just being deliberately uncooperative in his approach.

11. Indeed, they pointed out that the Respondent had failed to cooperate in these proceedings from the outset, failing to comply with directions by omitting to complete the landlord's columns in the schedule of disputed service charges as well as failing to provide any witness statements or other evidence.

12. They also pointed out that Mr Rose had been a co-owner of the building since 2012, had represented the Respondent in the mediation and corresponded at times with the tribunal, most recently on 26 November 2018. Further, that as a commercial landlord with a valuable interest in the building, including the current development of an eighth flat, the Respondent also had the means to obtain professional representation if it so chose.

13. The Tribunal then decided the application, refusing an adjournment on the following basis. The Tribunal reminded itself of the terms of the overriding objective under Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Rules') and the requirement to deal with cases fairly and justly and the specific terms of Rule 3(2) as follows:

'3(2) Dealing with a case fairly and justly includes—
(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the Tribunal effectively; and
(e) avoiding delay, so far as compatible with proper consideration of the issues.

14. Having regard in particular to (a), (c) and (e) the tribunal was satisfied that it was fair and just to proceed with the hearing of this application. It was plain that Mr Buckland could, if he so chose, participate in the hearing of this matter by conference call. Indeed the tribunal was satisfied that Mr Buckland was being deliberately uncooperative and disruptive in that regard. Even if this was not the case there was no adequate explanation why its previously instructed solicitors or Mr Rose could not have represented the Respondent as he had before nor why the Respondent could not have arranged some other representation.

15. On the other hand, 6 of the Applicants were in attendance at the hearing together with a lay representative and were ready and anxious to proceed. To adjourn at this late stage would have been highly inconvenient and unfair to them and a waste of their and the tribunal's time and resources. Moreover, given the nature of the issues and armed with the Respondent's solicitor's submissions by letter, the Tribunal was satisfied that it could properly and fairly consider the issues even if Mr Buckland now chose not to participate in the hearing (Mr Buckland terminated the conference call immediately upon the Tribunal refusing his application for an adjournment).

The Inspection

16. The inspection commenced shortly after 10am on 28 November 2018. The old Post Office premises lie just across the road from the Court. The building is a traditional late Victorian main post office building, now converted into commercial (restaurant) premises on the ground floor with 7 flats arranged above and behind the commercial unit, with an eighth flat currently under development.

17. The Tribunal visited the basement to view the various electricity meters, one for each flat, and the gas supply and meterage. The Tribunal then climbed the communal staircase and viewed the internal common parts. It was noted that there are a number of out of date fire extinguishers positioned about the place. There is limited but adequate lighting on the stairs. Generally, the stairway was passably clean and tidy, but the condition of the old casement and other window frames was poor and there is a need to redecorate.

18. From the various landing windows the Tribunal was able to observe at close quarters much of the external guttering to the Building (see the comments below

under Mr Cherry Picker). The Tribunal was also shown (from an upstairs window) the rear yard areas of the Building as well as an adjoining area of land (currently subject to some clearance works) with rudimentary access gates on to Pump Lane.

The Law

19. As referred to above the application is primarily made under section 27A of the 1985 Act, which provides as follows:

27A Liability to pay service charges: jurisdiction

(1)An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

20. The application engages section 19 of the 1985 Act that establishes a statutory test of reasonableness limiting the recovery of relevant costs making up any service charge as follows:

19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

21. The meaning of reasonably incurred was considered by the Upper Tribunal in the lead case of *Forcelux v Sweetman*, where Mr Francis stated that:

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

40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether

the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.

41. It has to be a question of degree, and whilst the appellant has submitted a well reasoned and, as I have said, in my view correct interpretation of 'reasonably incurred', that cannot be a licence to charge a figure that is out of line with market norm.'

22. Notably, in relation to the costs of major works in that case he accepted that the whilst there could be no criticism of the landlord's policies and procedures for appointing contractors, nonetheless he did *'..not see why they [the tenants] should be saddled with a cost that appears from the evidence to be substantially in excess of what could reasonably be construed as a market rate.'*

23. More recently this approach was endorsed by the Court of Appeal in *LB of Hounslow v Waaler* [2017] EWCA Civ 45, where Lord Justice Lewison stated '*In my judgment, therefore, whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome*.'

24. As to the second limb of section 19, dealing with the standard of services, which is a central issue in this case, it is well established by the cases (see *Yorkbrook v Batten* (1985) HLR 25) that where a service has been carried out otherwise than to the relevant standard that does not mean that no charge is payable. Rather the amount charged should be reduced to reflect the extent to which the service fell short of the requisite standard. Though the charge may of course be diminished to zero where the tenant received no value whatsoever from the services or work for which the service charge has been levied.

25. As regards the application for a section 20C order, the section itself provides as follows:

20C Limitation of service charges: costs of proceedings.

(1)A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application…
(3)The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

26. The relevant case law in relation to section 20C was reviewed by the Deputy President in the Upper Tribunal in *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0519 (LC) at paragraphs 51 to 59. His review began necessarily with reference to the Court of Appeal decision in *Iperion Investments Corporation v Broadwalk House Residents Limited* (1996) 71 P & CR 34 and the well known passages from the judgment of Peter Gibson LJ, before continuing with detailed reference to the decision of the Lands Tribunal (HH Judge Rich QC) in *Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000.

27. The Deputy President in *Conway* quoted with apparent approval the following passages from the judgment of HHJ Rich QC in *Doren* relating to the exercise of the 20C discretion:-

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

29. I think that it can be derived from [Iperion] that where a court has power to award costs, and exercises such power, it should also exercise its power under s20C, in order to ensure that its decision on costs is not subverted by the effect of the service charge.

30. Where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an Order under s.20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct.

31. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under s.20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants or some particular tenant should have to pay them.

28. The review in *Conway* continued with reference to *Schilling v Canary Riverside Development PTE Limited* LRX/26/2005 where HHJ Judge Rich QC reiterated that the only guidance as to the exercise of the statutory discretion which can be given is to apply the statutory test of what is just and equitable in the circumstances. Noting that the observations he had made in his earlier decision

were intended to be "illustrative, rather than exhaustive" of the matters which needed to be considered, and adding significantly (at paragraph 13) that:

"The ratio of the decision [in Doren] is "there is no automatic expectation of an Order under s.20C in favour of a successful tenant." So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour."

29. More recently in *Bretby Hall Management Co Ltd v Pratt* [2017] UKUT 70 (LC) His Honour Judge Behrens referred to the decision in *The Jam Factory* [2013] UKUT 0592, which he took to contain a full review of the authorities, and summarised the applicable principles as follows:

"1. The only principle upon which the discretion should be exercised is to have regard to what is just and equitable in the circumstances.

2. The circumstances include the conduct of the parties, the circumstances of the parties and the outcome of the proceedings.

3. Where there is no power to award costs there is no automatic expectation of an order under s 20C in favour of a successful tenant although a landlord who has behaved unreasonably cannot normally expect to recover his costs of defending such conduct.

4. The power to make an order under s 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not used in circumstances which make its use unjust.

5. One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income."

30. The Tribunal duly relies upon this guidance in its consideration of the Applicants' application for a direction under this section (below).

The Lease

31. The hearing bundle includes the lease dated 11 December 2015 of apartment 3 ('the Property') at the Old Post Office ('the Lease'). The lease of each of the other 7 flats is understood to be in substantially the same form. In so far as is presently relevant the Lease expressly provides as follows:

Under clause 1.1 Definitions

Building: the building only known as 22-23 Cecil Square Margate CT9 1AA as shown hatched on the location plan on the Plan

Common Parts: these are the front door, entrance hall, passages, staircases and landings of the Building as shown edged in blue on the Plan that are not part of the Property or the Flats and which are intended to be used by the tenants and occupiers of the Building.

Default Interest Rate: 4% above the base rate from time to time of Barclays Bank plc or, if that base rate is no longer used or published, a comparable commercial rate reasonably determined by the Landlord.

Retained Parts: all parts of the Building other than the Property and the Flats including:

(a) The main structure of the Building including the roof and roof structures, the foundations, the external walls and internal load bearing walls, the structural timbers, the joists and guttering;
(b) All parts of the Building lying below the floor surfaces and above the ceilings;
(c) All external decorative surfaces..
(d) The Common Parts;
(e) The Service Media at the Building which do not exclusively serve either the Property or the Flats; and
(f) All boundary walls fences and railings of the Building.

Service Charge: a fair and reasonable proportion determined by the Landlord of the Service Costs

Service Charge Year: is the annual accounting period relating to the Services and the Service Costs beginning 25th March in 2015 and ech subsequent year during the Term..

Service Costs: the costs listed in Part 2 of Schedule 7

Services: the services to be provided by the Landlord and listed in Part 1 of Schedule 7.

Under Schedule 4 Tenant Covenants, clause 2 Service Charge by clause 2.1 The Tenant shall pay the estimated Service Charge each Service Charge Year in four equal instalments on the normal quarter days being 25th March, 24th June, 29th September and 25th December in each year.

By clause 4 Interest on late payment of Schedule 4, the tenant covenants 'To pay interest to the Landlord at the Default Interest Rate (both before and after any judgment) on any Rent, Insurance Rent, Service Charge or other payment due under this lease and not paid within 14 days of the date it is due. Such interest shall accrue on a daily basis for the period from the due date and including the date of payment.

By clause 6 Utilities of Schedule 4, at 6.1 the tenant covenants 'To pay all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Property.'

Under Schedule 6 Landlord Covenants the landlord covenants by clause 4 Services and service costs at clause 4.1 'subject to the Tenant paying the Service Charge, to provide the Services.

Under Schedule 7 Services and Services Costs Part 1. The Services, by clause 1 Services, the services include, amongst other things, at (n) any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.'

Also under Schedule 7 Services and Services Costs at Part 2. Services Costs, by clause 1 Services Costs, the services costs are the total of '(a) all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of .., (ii) the supply and removal of electricity, gas, water, sewage and other utilities to and from the Retained Parts .. (b) the costs, fees and disbursements reasonably and properly incurred of:

(i) managing agents employed by the Landlord for the carrying out and provision of Services or, where managing agents are not employed, a management fee for the same
(ii) accountants employed by the Landlord to prepare and audit the service charge accounts; and
(iii) any other person reasonably and properly retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of the Services.'

The Contested Charges

(1) Y/E 24 March 2017 (from 25 December 2016 only)

a) Management Fees

32. The first item challenged by the Applicants is the management fee of £1,968.00 charged by Carlton Property Management Ltd (page [173] refers) for the period 25/12/16 to 24/3/17 (no costs falling within the definition of service charges in the Lease were charged prior to the former date according to KDL Law in their letter of 30 June 2017 [251]).

33. The Applicants query whether this sum was incurred or is chargeable at all where Mr Buckland is a director of Carlton Property Management Ltd and where there was no section 20 consultation before CPM's appointment on or about 5/12/16. Subject to these points the Applicants say that they would be content to pay an amount equal to the fee charged by the current managing agents, annually £300 inclusive of VAT per flat. They say there is no proper explanation for the increase in fees from the pre-sale estimate of £2,250 to £4,800.

34. The Respondent explains that it approached three ARMA accredited managing agents prior to the appointment of CPM but none of them were able/willing to

manage the Post Office so that CPM was appointed. Further, that the management fee charged was 'calculated on the basis of the complexities involved in calculating the individual usage of electricity and gas in addition to the general management needs of the building.' The charge of £1,968 they say is reasonable, amounting as it does to £450 inclusive per flat per year.

35. Considering the points raised, there is no requirement for a section 20 consultation in relation to the management agreement as the appointment of a manager is not 'works' within the scope of that section. Nor can there be any objection in principle to the appointment of CPM; despite the obvious link with Mr Buckland CPM is a separate company from the Respondent and may properly be appointed to act as the Respondent's managing agent.

36. The Tribunal does not, however, accept the justification for the level of charge advanced by the Respondent. In the Tribunal's view there is no particular complexity in calculating the individual usage of electricity for each flat. Further, the year end charge appears to be an 'after the event' attempt to levy an increased fee when presumably the fee was agreed in advance.

37. Moreover, the charge of £450 per flat is in our view excessive, compared that is with the usual level of fees for similar premises encountered by this Tribunal. Rather the per flat charge conceded by the Applicants is in our view within the market norm and reasonable. The amount recoverable therefore for the single quarter to 24/3/17 is £800 (rather than £1,968) i.e. £75 per flat.

b) Other Management Charges

38. In addition the Applicants dispute a £300 set up charge and £108 title registers disbursement levied by CPM in the single 2016/17 quarter (page [177] refers). They query whether 'a contract set up fee sent from one of the Respondent's companies to the other can be considered reasonably incurred.'

39. In the Tribunal's view these charges are reasonably incurred and recoverable. Certainly, there was nothing unreasonable about appointing a professional managing agent and such costs are within the scope of the service costs under Schedule 7, Part 2, clause 1(b)(i). Further, upon appointment there is an amount of work to be done in setting up, and whilst sometimes this cost may be absorbed by a managing agent it is not uncommon for a charge of this magnitude to be levied. Indeed, such a charge is contemplated by the RICS Code on Residential Service Charges.

40. Equally, as part of properly establishing a new client file it is good practice, if not essential, to obtain up to date Official Copy Entries and copy leases and the sum claimed is no more than the standard charge made by the Land Registry in this regard (page 073 refers). In these premises the Tribunal holds that both charges are reasonably incurred and payable.

c) Electricity

41. These charges are the major issue between the parties. The Applicants submit that the Respondent has refused to accept meter readings provided by them although supported by photographic evidence, instead relying for its charges on estimates of usage, apportioned from a short period of winter usage. In addition they say that supplier bills have been charged regardless of each Applicant's date of acquisition so that they have been charged for periods of use before they owned their leases. They also say that inflated and unreasonable unit prices have been charged as well as VAT at the rate for commercial premises (20%) rather than the residential rate of 5% which should apply.

42. Ultimately the Applicants submitted that the correct charge for each flat should be based on the following:

    (i) Actual metered use, taking the difference between the last known meter reading before the grant of each lease and later meter readings e.g, as at 7/3/17.
    (ii) The Npower current standard variable rate of £0.14742 inclusive of VAT at 5% applied to the above, rather than what they allege is an excessive (possibly commercial) rate of £0.244805 applied by the Respondent up to 2/1/17 or the lower E.On rate of £0.108703 which it applied thereafter up until 7/3/17.
    (iii) Plus a standing charge of £0.30408 per day inclusive of VAT which presumably came from the same source.

43. In addition the Applicants dispute the charges for the communal supply, budgeted as £45 per quarter and charged in the sum of £1,252.87. They submit that this charge simply cannot be correct given the electricity use in the common parts relates to merely a door entry system and minimal lighting on each stairway and landing.

44. The Respondent relies on the spreadsheet (at [235]) appended to the letter dated 04 April 2017 from its solicitors KDL Law. The letter states that Npower 'started charging on three different time rates, but as the sub-meters are only able to show a single rate, accordingly only the lowest KW charge rate p/unit has been applied..'.

45. The letter confirms also that the various charges such as 'Settlement & Agent' and 'Capacity Charge' raised by Npower and applicable to commercial user should not been passed on to the Applicants and that the appropriate VAT rate is 5%. However, KDL maintain that Climate Change Levy is payable; charged by Npower in January 2017 at a rate of 0.00559 per kWh. On this basis it is said the total amount rechargeable to date was £3,499.48 rather than a figure of £5,454.84 (although this is not the figure in the accounts at [173]).

46. As regards the electricity charges the Tribunal notes that neither party contends that they are not service charges or that for any other reason they are outside the jurisdiction of the tribunal and in so far as necessary the Tribunal accepts that this is correct. Although the recharges for electricity are not defined as service charges under the Lease but are instead recoverable under the tenant's covenant at Schedule 4, clause 6, they do fall within the definition of service charge under section 18 of the 1985 Act given that the supply is plainly a service and the amount charged varies according to the relevant costs. They are accordingly recoverable only in so far as they satisfy the test of reasonableness under sections 19(1) or (2) (see above) as the case may be.

47. Examining the different unit prices relied upon, the Respondent has provided no evidence in support of the reasonableness of its initial rate of £0.244805 nor is it apparent that this is the lowest of any of the rates charged by Npower as asserted. On the contrary this is obviously a very high rate for domestic use for the relevant period, approximately double what the Tribunal's experience would lead it to expect. Further, in the absence of any evidence of market testing or any attempt by the Respondent to secure a competitive alternative rate the Tribunal reject this rate as unreasonably incurred.

48. By contrast the rate relied upon by the Applicants does appear to the Tribunal to be in accordance with market norms for the dates in question, indeed it is higher than the alternative E.on rate. The Tribunal accepts, therefore, that this is a reasonable rate to apply to the actual metered consumption. The Tribunal also accepts and in so far as necessary finds as a fact that the metered consumption was as set out in the Applicants 'willing to pay' calculation, based upon the opening readings as at 30/8/15 and the later meter readings set out there.

49. As for the standing charges, again no justification is provided for the total charge of £1,312.02. It actually appears from the apportionment at page [235] that this charge covers a period before the commencement of at least some of the leases. The mistaken calculation in respect of Flat 4 does nothing to assist. For these reasons the Tribunal prefers the standing charge advanced by the Applicants, which appears to be reasonable and results in sensible overall charges (see below). The Tribunal also accepts the Applicants' point that CCL should not be added because this is only payable for non-domestic supply.

50. Based upon the foregoing the Tribunal determines that the correct, reasonably incurred electricity charges for the period to 07/03/2017 (the last meter reading date before the y/e of 24 March 2017) are as follows:

Flat	F1	F2	F3	F4	F5	F6	F7	Total
Consumption (@£0.14742)	158.18	237.05	187.72	53.51	80.20	108.94	495.92	
Standing Charge (@£0.30408)		126.50	127.50	137.14	159.64	84.23	165.41	106.73
Total	284.68	364.76	324.36	213.15	164.43	274.34	602.65	2,228.37

51. As for the 'communal electricity' charges (recoverable as service charge under Schedule 7, Part 1, clause 1(c) and Part 2, clause 1(a)(ii) it cannot be correct simply to take the total flat usage from the overall charge to arrive at the communal charge, particularly where the flat charge relied upon is incorrect (as determined above). Further, the balance of £1,252.87 itself appears wholly excessive for the Retained Parts usage, the likely explanation it seems being that the charge is largely attributable to use by the commercial tenant of the building.

52. By contrast the estimated charge of £180 per annum is what one would expect in the circumstances. Accordingly, given that the Tribunal has no means of dissecting the billed cost to get to the actual communal usage, the Tribunal adopt the Respondent's own estimate as the best approximation of the communal charge reasonably incurred.

d) Gas

53. As regards the gas recharges the Applicants dispute both the individual charges totalling £1,212.43 and 'communal charge' of £567.21. They submit that it is not clear what the total charge comprises and how it is allocated to the flats. Further, they point out that there are no gas appliances at all in the Retained Parts comprising principally the Common Parts and invite the tribunal to infer that in fact the gas is being used by the commercial tenant.

54. Lastly, the Applicants submit that in any event the charge should be no more than £100 per applicant, presumably on the basis they contend the agreement with the current provider Total Gas and Power is a qualifying long term agreement in respect of which no section 20 consultation has taken place, albeit this point was not developed at the hearing. The Respondent has not responded at all to the points raised.

55. On the basis of the material before it the Tribunal is not prepared to find that the present gas supply agreement is a QLTA. The Applicants suggested variously that the contract was renewed on 01 June 2015 (see page [115]) or 'renewed with the supplier on or before 31 October 2016' (see the Schedule) to expire on 4/6/20. The former date would produce a peculiar contract term and it seems more probable that if made about that time the contract was for a 5-year term and entered before there were any contributing lessees so as to come within the exception provided by Regulation 3(1)(d) of the Service Charges (Consultation Requirements) (England) Regulations 2003.

56. As to what the true charges should be the Tribunal has only the figure of £1,212.43 to rely upon and accepts in the absence of evidence to the contrary that this represents the metered supply to the flats. However, it appears to be the case that this includes CCL and VAT at 20% (as indicated by the Respondent's correspondence). Although it is accepted the Respondent is not re-selling the gas, the costs are within the scope of section 18 and can only be recouped in so far as they meet the statutory test of reasonableness. Neither of these additions in the

Tribunal's view meets that test, CCL should not be charged to a domestic supply and VAT should only be charged at 5%.

57. Making due allowance for these elements the Tribunal determines that the reasonably incurred service charge for the supply of gas for the quarter ending 24/3/17 is in the sum of £1015.86 (£967.48 plus VAT at 5% based on the cost of supply being 4.4p/kWh and CCL at 0.195p/kWh as shown by the contemporaneous invoices [114-115]). Further, in the light of the evidence regarding supply to the Retained Parts the Tribunal determine that no charge can be made for 'Communal Gas' (as it is described in the accounts).

e) Water Supply and Sewerage

58. The sum charged for this item in the y/e accounts is £1,525.29. The Applicants query whether this charge is recoverable under the lease at all. Beyond that in relation to this charge they dispute the usual apportionment of 9.375% per flat because there is as yet no flat 8 and also the inclusion of VAT in the sum of £99.62 on the grounds that domestic supply is zero rated. They calculate the rebate due is in the sum of £74.72.

59. There can be no doubt that water supply and sewerage costs are recoverable as service costs under the terms of Lease, specifically pursuant to Schedule 7, Part 2, clause 1(a)(ii). As to the apportionment, it appears to the Tribunal that the 9.375% applied by the Respondent, and which is not otherwise contested, properly accounts for flat 8 and the nil supply to those premises (under conversion). However, for the same reasons as referred to above in relation to gas supply the Tribunal accepts that the charge to the tenants should not include VAT. Each should only be liable therefore for 9.375% of £1,425.67, a rebate of £65.35.

f) H&S Risk Assessment

60. The Applicants challenge the sum £530.88 charged in the y/e accounts for a Health & Safety Risk Assessment. They point out that no invoice has been produced or assessments made available on handover to the RTM. Even if such a charge was incurred, they submit that such a charge is unjustified and unreasonably incurred given that the flats were then only recently converted. They point to the fact that Building Control had issued a completion certificate in 17 June 2015.

61. To be clear, in the Tribunal's view such a cost is plainly a recoverable service charge, coming within the scope of a number of different provisions of Schedule 7, most obviously Part 1, clause 1(g) and (n). To commission such assessments on a regular basis is an important part of a managing agents function and expressly provided for in the CPM terms of appointment (the Leaseholder's Handbook, Appendix 2, page 20 of 28 refers [314]).

62. As to whether this charge was incurred or not, it is regrettable, if not reprehensible, that no copy invoice has been disclosed by the Respondent. However, the annual accounts prepared by chartered accountants Humphrey & Co, do provide some substantiation for the charge (although not audited the terms of the declaration at page 2 of the accounts [172] are supportive). Further, it is likely such an assessment was commissioned by CPM on taking over the management and the level of charge is unremarkable. In these circumstances the Tribunal is not prepared to find that the entry was mistaken or for that matter invented or fraudulent. Rather on balance the Tribunal determines that the cost was incurred and reasonably so and is payable.

g) Accountancy

63. The Applicants dispute both the accountancy charge of £460 and an additional £60 charge raised by Humphrey & Co for 'First year compliance work for accounts preparation.' They submit that the accountancy costs are included in the management fee and should not therefore be charged separately.

64. The Tribunal does not accept the latter argument. The managing agent will of course keep a running account of service charge costs as required under here under the terms of appointment (at Appendix 2 to the Leaseholder Handbook) but this is distinct from the preparation of the year end service charge accounts. Notably the Lease makes express provision at Schedule 7, Part 2, clause 1(b)(iii) for the Landlord to employ an accountant for this purpose and recover the costs as service charges.

65. To appoint an accountant in this way obviously provides an added measure of independent scrutiny of the service costs and is an additional safeguard for lessees. Further in the Tribunal's experience the level of charge is clearly competitive for the preparation of such accounts. For these reasons the Tribunal is satisfied that the principal charge is reasonably incurred and payable. Equally, the initial charge raised for additional work done on first being instructed appears to be reasonable and is in the Tribunal's view also payable.

h) Fines and Charges

66. The objection here relates to the sum of £480 claimed as administration charges and described in the accounts as 'Directly Recoverable.' The amount claimed comprises eight charges of £60 each for various 'second reminders' and 'final notices' sent by CPM to lessees in respect of alleged arrears of service charge. The £60 (£50 plus VAT) extra charge in each case is provided for under CPM's terms of appointment (see page 24 of 28 [318]), which make clear that the amount is 'Directly chargeable to the lessee..'.

67. The Applicants contend that these amounts are not chargeable because there is no provision for fines in the Lease. Further, they say that the charges were raised in the pursuit of sums that were not due and where key information and

clarification had not been provided so that they were in any event unreasonably incurred. The Respondent presumably argues to the contrary.

68. The Tribunal considers that the sums claimed are not recoverable. There is no provision under the Lease entitling the Respondent to levy these charges upon the lessees. The Tribunal notes of course the terms of Schedule 4, clause 7 but these 'fines' are, as referred to above, expressly payable by the lessees not by the Landlord. Similarly, the Tribunal has considered the possibility of recovery under Schedule 7, Part 2, clause 1(b), but again this is not available as there is no indication that these charges accrue to the Respondent so as to be 'costs, fees and disbursements' incurred by the Landlord at all.

69. Direct charges make sense of course in relation to requests for services by a lessee such as dealing with a request to sub-let where the fee can be demanded in return, but that is not the case here and there is no apparent contractual or other basis for the recovery of these charges either as administration charges (properly so-called) or otherwise as service charges.

i) Appleton Properties

70. The disputed charge is in the sum of £336.00 and relates to an invoice raised by Appleton 'Lettings, Management, Sales' for the following works:

30-12-2016	¼ meter readings and report	£48
30-12-2016	Additional works/time 3hr x £80	£288

71. The Tribunal does not find anything objectionable or unreasonable in the use of a local agent to provide a dedicated meter reading service. Further the actual cost appears eminently reasonable. The sum of £48 is, therefore, in our view recoverable as service charge pursuant to Schedule 7, Part 2, clause 1(b)(iii), and equally is reasonably incurred for the purposes of section 19 and due and payable.

72. However, in the absence of any explanation for the additional work charge the Tribunal cannot be satisfied that this was even incurred 'in connection with the Building or the provision of Services' nor that it was reasonably or properly incurred. Accordingly, the Tribunal determines that the balance of the invoice is not payable.

j) Leo Property Management

73. The Applicants challenge the sum of £75 charged in respect of an invoice dated 4/10/16 from Leo Property Management to supply and fit 5 no. 2D lamps and 2 no. starters. The relevant invoice at [121] indicates that the works were completed on 3/10/16. The Applicants allege that there was no supervision of the works nor any follow-up despite their complaint that the works were never completed and the lights outside Flats 1 & 2 did not work. The matter was dealt with in the witness evidence of Pat Elliott (see [364]) in the following terms:

'Repair/replacement lighting to outside of flat 1 was never undertaken despite repeated requests. From the agent '4.Lighting outside Flat 1:- several lamps were replaced on 3rd October. If these lights are still not working, would you email Customer Services on …?' The lights were never fixed.

74. In the absence of any evidence from the Respondent that these repairs were properly carried out and completed or that the invoice related to some other work, the Tribunal accepts that the work covered by the invoice was to the lobby lights and was not done to a reasonable standard. The Tribunal determines accordingly that the said sum of £75 is not payable.

k) Standfast

75. The challenge under this heading relates to 2 no. invoices from Standfast. The first invoice dated 30/11/16 [125] in the sum of £82.10 is to 'The supply and fit combination padlock to code .. To remove 2x monkey tail bolts as requested, although they are also used to hold gates together/closed.' The second invoice dated 22/2/17 in the sum of £276.58 is 'To supply and fit locks plus repairs to doors. Side entrance door to basement & Back door to yard. All keys to Appletons.' This relates back so it appears to part only of 'Works Order: 943' at [126] which specified the removal of existing padlocks to the side entrance door and back door ('no key available') and door repairs, as well as other lock replacement works totalling £485 plus VAT.

76. The relevant gates, the subject of the padlock replacement, were pointed out to the Tribunal on the inspection, the Applicants confirming in evidence at the hearing that this work related to gates protecting adjacent land. The Tribunal is not helped in this regard by the absence of a marked up title plan. However, from its own observations and the available evidence the Tribunal is satisfied that this work does not relate to the Retained Parts nor in any event was 'for the benefit of the tenants or occupiers of the Building' so as to come within the 'sweeping up' clause 1(n) in Schedule 7. The Tribunal accordingly reject this charge.

77. In relation to the second invoice the Applicants argued that the 'costs relate to the Landlord's private areas within the Premises including upgrading padlocks and padbolts to the access door from the communal area and fitting Union 5-lever sash locks throughout the secured basement area… there is no provision in the leases for improvements or for the Respondents private areas.' They pointed to the terms of the Handbook confirming [301] '..that the lease does not include any rights of access to the basement area for leaseholders, and access is prohibited to this area, unless accompanied by an authorised person..'.

78. The Tribunal accepts that the lessees do not have free access to the basement but that does not mean the area is outside the Retained Parts. Rather it does appear to the Tribunal that the basement areas of the Building (not otherwise let to the commercial tenant or any other) are within the Retained Parts. The issue it seems to the Tribunal is whether these are works of repair. It is well established that

repair or replacement will include improvement where the only proper method of repair or appropriate replacement effects that improvement.

79. Given the terms of the relevant Works Order and second invoice the Tribunal holds that this is the position here and that the works to the side entrance door and back door charged are properly regarded as necessary repairs. In the Tribunal's judgement the work was within the scope of clause 1(a) of Part 1 to Schedule 7. It appears likely also that the work would be covered by clause 1(a)(iii) of Part 2, as a necessary addition to the security of the Building. Further, there was no suggestion that this work was not carried out to a reasonable standard. In the circumstances the Tribunal concludes that this cost was reasonably incurred and is due and payable.

l) Mr Cherry Picker

80. The work in question under this heading was intended to clear all box gutters and drainage troughs as well as to check that hopperheads were clear at the top (Works Order: 900 refers [128]). The related invoice dated 11/12/16 (at [129]) in the sum of £936.00 describes the work thus, 'To supply vehicle mount cherry picker and labour to carry out the following work on Sun 11the Dec 06 [sic]. To clear box gutters of debris, rod and unblock down pipes, clear all debris and rinse on completion – Union Crescent, Cecil Square and rear elevations.'

81. There is no issue that these works were necessary. However, the Applicants' complaint is that the work was unsupervised and was not completed to an adequate standard with some pigeon faeces and moss unremoved and at least one downpipe still blocked with a tin can at low level. They say that a deduction of 50% should be made to reflect the quality of the work done.

82. Although the Tribunal's inspection was made some 2 years after the date of these works the guttering, troughs and hoppers appeared to be in a relatively poor state, with substantial overgrowth and build-up of pigeon faeces. The Tribunal infer from this that whilst Mr Salisbury who carried out the work may have removed the worst of the debris and obstructions the task was not completed to a reasonable standard but was effectively only three-quarter's done. The Tribunal accordingly allow only the sum of £702 (585 plus VAT) in this regard.

(2) Y/E 24 March 2018 (Estimated only)

83. In relation to this service charge year the Tribunal is only concerned with the estimated service charge at [134] and on account demands and accordingly in each case whether the demanded amount satisfies the section 19(2) test (above), that is to say the amount claimed is no greater than is reasonable. In so far as the Respondent may seek to recover any other or greater amounts following preparation of the y/e accounts for 2018 this can of course be the subject of further challenges if appropriate. The disputed estimates are examined below.

a) Management Fees

84. The Applicants dispute the estimated sum claimed of £4,800 and contend (as above) that no more than £250 plus VAT per flat should be chargeable for they say the 6 months for which management was provided. They allege that 'any pretext to management ended in August 2017' in advance that is of the RTM date of 11 April 2018. This they contend should be taken in to account even in relation to on account charges on the exceptional basis accepted in *Knapper v Francis* at paragraphs 38 to 40, given so it is alleged that CPM would have known they were not intending to do anything.

85. For the reasons given in relation to the y/e 24 March 2017 the Tribunal accept that the management charge should be limited to the rate proposed by the Applicants, i.e £3,200 per annum or £300 per flat (including VAT).

86. However, whilst accepting the point made in *Knapper v Francis*, that matters which become known after setting a budget but before a particular payment becomes due can affect the reasonableness of the sum to be paid, the Tribunal cannot impute the intention on the part of CPM 'not to do anything' alleged by the Applicants. Although the Applicants may retrospectively have grounds for complaining about the standard of management delivered, there is no evidence that CPM had decided not to manage the property in accordance with the terms of their appointment and it would be a step too far to reach this conclusion.

b) Legal Fees

87. The Applicants contend that they should not be liable at all for the estimated sum claimed of £600 on the basis that there is no provision under the Lease for recovery. Otherwise they argue that in the absence of any reasoned justification or explanation for the provision it should simply be disallowed.

88. Neither party referred the Tribunal to any authority in relation to the recovery of legal costs through the service charge and the point has not been developed in argument at all by either party. The answer is always a matter of the construction of the lease in question, considering the words used in their documentary, factual and commercial context to divine objectively what the parties must have intended them to mean (in accordance with the approach adumbrated in *Arnold v Britton* [2015] UKSC 36.

89. More specifically in relation to the recovery of legal costs as service charge, the Tribunal reminds itself of the decided cases in this regard from *Iperion* through, for example, *St.Marys's Mansions v Limegate Investments Co Ltd* [2002] EWCA Civ 1491 and *Fairbairn v Ethal Court Maintenance Ltd* [2012] UKUT 102 (LC), to more recently *Sinclair Gardens v Avon Estates* [2016] UKUT 317 (LC) to *Bretby Hall Management Co Ltd v Pratt* [2017] UKUT 70 (LC).

90. In summary, in order to recover legal costs through the service charge either 'some clear and unambiguous lease terms are required' or there must be 'other language apt to demonstrate a clear intention that such expenditure should be recoverable.' Considering the various clauses of Schedule 7, the most obvious possibility is clause 1(b)(iii) of Part 2, but in the Tribunal's view the words of this clause are not apt to cover legal costs incurred in respect of disputed service charges. Such costs do not in our view fit with the phrase 'in connection with the Building' nor are they covered by 'the Services.'

91. Further, without any explanation from the Respondent or CPM for the provision made, where no such allowance has been made in any previous service charge estimates or year end accounts, the Tribunal would not be inclined to allow the amount charged in any event. Without some explanation or justification for this new charge the Tribunal cannot be satisfied that the sum claimed or indeed any sum is reasonable.

c) Project Manager/Surveyor

92. The Applicants contest the provision of £1,000 under this heading on the basis that the Respondent failed to provide any information about it. They are not willing to pay any amount without supporting evidence of spend.

93. Given that this is a forward provision the liability to pay cannot depend on proof of spend. However, as in the case of the legal costs in the absence of any reply explaining this provision, where none was made in previous years, it is not possible to be satisfied that this amount or any amount is 'no greater than is reasonable.'

94. In the circumstances the Tribunal decline to allow this sum. That said it may be noted of course that if such a sum was incurred in the course of the year it could be claimed pursuant to the year end account. Whilst, if it was not incurred the Respondent would necessarily have had to account to the RTM company for this sum in any event.

d) Electricity

95. The budget amount claimed is only in the sum of £180. Although the Applicants object, in the light of the reasoning at paragraphs 51 above the Tribunal has no hesitation in accepting that this was a reasonable provision to make for the communal electricity charge and is duly payable.

e) Gas

96. No provision is made in the estimated budget for gas consumption (either communal or for the flats) and therefore no issue arises in this regard.

f) Water Supply & Sewerage

97. The estimated cost of this service charge item is claimed in the sum of £3,050. The Applicants complain that there has been no discussion, consultation or information about the charges and are concerned that they should not bear an unfair share of the costs where they share the system with a 50-covers restaurant. They point to their entitlement under Ofwat rules to pay a reduced charge if they are not provided with the information used to calculate their bills. Also to the fact that their supply should be zero rated because it is domestic.

98. Given that the charge is merely a budget and the sum claimed on account the Tribunal is primarily concerned with whether the amount claimed is no greater than is reasonable. Having regard to amount allowed (above) in respect of the last quarter of y/e 2017 the Tribunal is satisfied that the sum demanded meets that test and is payable on account.

99. There is insufficient evidence to identify the terms of supply and whether consultation was necessary or not, and this may have to be revisited in relation to the y/e account. Significantly in this regard, pursuant to section 21 of the 1985 Act the lessees have a statutory right to inspect all documents which relate not only to their property but also, where it is relevant to the calculation of the relevant costs, those documents relating to other properties owned by the landlord. It is a summary offence for a person to fail, without reasonable excuse, to comply with this duty and the Respondent and its directors will no doubt want to take note of their potential exposure in this regard.

g) H&S Risk Assessments/Audits

100. The Applicants question the budget figure of £322 under this head, querying 'whether this service was necessary at all given there is no provision in the leases or requirement in legislation for annual assessments. They repeat that on handover to the RTM no assessments were provided and that in October 2018 the RTM company initiated its own survey at a cost of £175.

101. As already noted above the commissioning of regular H&S assessments is an important part of a managing agents responsibility and in the Tribunal's view it was reasonable to include some provision in this regard. As to whether the amount is 'no greater than is reasonable.' Noting the cost incurred by the RTM company, this does sound unusually modest. On balance and having regard to the amount allowed in the preceding year the Tribunal accepts that the budgeted figure meets the statutory test and is payable.

h) Accountancy

102. The budgeted cost is £460. The Applicants 'are unwilling to pay any amount without evidence of spend, and in such circumstances, no more than current rate for accountancy for the building, £150.'

103. As noted above the Lease expressly provides for the landlord to recover as 'service costs' the costs, fees and disbursements reasonably and properly incurred of .. (ii) accountants employed by the landlord to prepare and audit the service charge accounts' (clause 1(b) of Part 2, Schedule 7 refers [425]). Further, the Tribunal is in no doubt that the budgeted sum of £460 is a competitive and reasonable figure for such a service. The £150 figure relied upon the Applicants does not appear to be in respect of a comparable service and is in our view unrealistic.

i) Additional Administration charges

104. These charges do not appear in the estimated budget for service charges but comprise again multiple £60 fine claims applied in each quarterly demand. The Applicants contend that these sums are not payable on the same grounds as above.

105. For the same reasons stated above in relation to the like charges in 2016/17 the Tribunal rejects this provision in the budget and determines that it is not payable.

j) Cleaning

106. The budgeted cost is £1,250. The Applicants say that they witnessed a maximum three superficial claims in the period and that the cleans did not include the internal surfaces of the windows, cleaning of the walls or wet clean of the floors. They are again 'unwilling to pay any amount without evidence of spend, and in such circumstances, no more than is reasonable for the light cleaning of the stairs.'

107. Again, whether the amount is payable does not depend upon whether it was ultimately spent. Similarly, whilst retrospectively the Applicants may have grounds for complaint about the delivery of this service that is not a basis for disallowing the costs. However, the actual amount claimed is very much greater than the incurred cost in the final quarter of the previous year (£105) and without some further explanation or justification does appear to be more than is reasonable. Accordingly, in the Tribunal's view no more than £420 should be allowed under this head.

k) Window cleaning

108. The budgeted cost is £900. The Applicants dispute the cost on the basis that 'the premises received a single visit by a window cleaner who travelled from East Sussex.' Further, that only the first floor windows were cleaned because the contractor lacked the necessary equipment to reach any other windows. They also alleged the work was done to a poor standard, was incomplete and there was no supervision or follow-up.

109. Whilst retrospectively the Applicants may have grounds for complaint about the extent or standard of cleaning as discussed above these are not relevant grounds of objection. However, in the light of the window cleaning estimate of £400 provided by Clarke & Crittenden the Tribunal is not satisfied that the estimate for the proposed works was reasonable, and determine instead that no greater than £400 was payable. If the works were not in the event done the Respondent will have to account to the Applicants for the sum paid.

l) Pest Control

110. The budgeted sum was £13,000. The charge is contested by the Applicants who submit that the Respondent having started (see the Notice of Intention dated 20 December 2016 [196-7]) failed to follow through and complete the section 20 consultation and therefore should be limited to recovering £250 per flat. In any event it was suggested that the amount claimed was excessive.

111. It is presumed by the Tribunal that this estimate related to some works to the building, such as permanent fixings e.g netting and spikes, so as to come within the scope of section 20. Certainly, the Respondent appears to have accepted this by commencing the consultation.

112. However, whilst the failure to consult may ultimately cap the amount recoverable, it is no ground for objecting to the budgeted amount and interim collection, except arguably in so far as the narrow exception established in Knapper can be relied upon. There is though no evidence to support the application of that approach in this instance and it was not relied upon in this regard by the Applicants.

113. More pertinent is the challenge to the amount claimed. The Tribunal is not persuaded that this is a reasonable estimate for measures to prevent pigeons from infesting the building. Far from it. The Tribunal would not expect the costs of such measures to exceed about £3,000 and decide accordingly that this is the sum payable under this head. Again, if the works were not in the event done the Respondent will have to account to the Applicants for the sum paid.

m) Fire Systems Maintenance Contract

114. The budgeted figure is £700. The Applicants submit that the communal stairs do not have a fire system (as distinct that is from the provision of fire extinguishers). Smoke detectors are in the flats and are demised to lessees. There is they say no apparent explanation for this estimate and it is disputed in its entirety.

115. The Tribunal did not observe any fire alarm or smoke detection system in the common parts and have seen no evidence of any contract or spend in relation to any such from previous years. In the circumstances the Tribunal accept the

submission of the Applicants in this regard and determine that £nil should be allowed.

n) Section 20 Consultation Fee

116. The budgeted sum is £415. The Applicants noted that a Notice of Intention was sent out (as above) but that no other progress was made. They contend that there is no provision in the Lease for consultation fees and that this cannot be considered a cost or expense.

117. The Tribunal disagree that such fees are not recoverable under the Lease terms. Section 20 consultation will normally be undertaken by the appointed managing agent, who will be entitled to charge an additional fee for such work. The position here is no different from the norm, as the Leaseholder Handbook and scale of fees confirms, and such costs are ultimately recoverable therefore as service costs under clause 1(b)(i) of Part 2 of Schedule 7.

118. The estimated provision in the budget appears reasonable in amount for the completion of the consultation commenced in December 2016. The Tribunal determines accordingly that this sum is payable; whilst once again noting that where the consultation was not completed the Respondent will need to account to the RTM company for any sum paid but not incurred.

o) General Repairs and Maintenance

119. The budgeted sum was £3,000. The Applicants contest the entire amount arguing that during the year there was no evidence of any quotations or tenders being obtained or works being carried out.

120. The Tribunal notes the points made but in its view some allowance is reasonably made in any service charge budget for general running repairs and minor maintenance. Indeed the Tribunal notes that the 2018/19 budget prepared by Clarke & Crittenden makes such an allowance, for 'Minor Repairs,' in the sum of £1,000. In the Tribunal's judgement the like sum would have been appropriate and no greater than is reasonable in the preceding year. The Tribunal allows £1,000 under this head.

p) Building Insurance.

121. The budgeted sum was £1,800. The Applicants stated that they were unwilling to pay any amount without evidence of spend.

122. As explained above the Tribunal is only concerned here with the budget. The figure of £1,800 is consistent with the previous year and with the insurance figure used by Clarke & Crittenden of £2,000. In the circumstances the Tribunal is satisfied that the budgeted sum was no greater than was reasonable and is payable.

q) Bank Charges

123. The budgeted sum was £120. It is not apparent on what basis such charges are recoverable under the terms of the Lease. Certainly, the Respondent has not advanced any positive case in this regard. Neither is it clear why these charges should be incurred or included in any service charge budget; Clarke & Crittenden have made no such allowance. In the circumstances the Tribunal reject this provision.

r) Interest Charges

124. Whilst interest may be recoverable pursuant to clause 4 of Schedule 4 to the Lease if properly demanded as a variable administration charge, such charges have no place in the service charge budget and indeed are not included.

125. The Tribunal notes that small interest payments have been added to service charge demands. In the light of the foregoing the amounts demanded cannot be correct, based as they are on erroneous demands. Given the very small amounts concerned the parties are invited to agree a figure if needs be, but in default of agreement to submit their respective rival calculations to the Tribunal for one or other to be approved.

s) Ground Rent

126. Ground Rent is not within the jurisdiction of the Tribunal to determine under section 27A of the 1985 Act and the Tribunal accordingly makes no determination in this regard.

t) Reserve Fund Contribution

127. The budgeted figure was £3,600. Whilst conceding the entitlement under the Lease to collect such monies under the terms of clause 1(a) of Part 2 of Schedule 7 to the Lease, the Applicants stated that they were unwilling to pay any amount as the reserve should now be held by the RTM company, noting that it has not been returned.

128. The Respondent would plainly be in default of its statutory obligations and duties as trustee under section 42 of the Landlord and Tenant Act 1987 if it is the case that it has failed to account for the reserve fund, and for that matter other service charge monies, to the RTM company and the Applicants no doubt will want to consider their remedies against it in the event that any such default continues.

129. However, such subsequent breaches are not in the Tribunal's view a correct basis for disallowing a reasonable budget estimate in respect of a recoverable cost. The actual allowance made by the Respondent's agent does though appear excessive, particularly in the absence of any evidence of a planned maintenance programme or the like. In these circumstances the Tribunal prefers the figure of £100 per apartment used by Clarke & Crittenden and determines accordingly that an overall reserve provision of no more than £1,000 would have been reasonable i.e £97.50 per apartment.

Conclusions

130. In accordance with the reasoning above the Tribunal duly decides that the following sums are due in respect of the disputed service charges:

(1) Y/E 24 March 2017 (from 25 December 2016 only)

	Disputed Claim	Allowed
Utility Supplies		
Electricity –flats	£4,175.35	£2,228.37
Electricity – communal	£1,252.87	£ 180.00
Gas- flats	£1,212.43	£1,015.86
Gas- communal	£ 567.21	£ nil
Water supply and sewerage	£1,525.29	£1,425.67
General repairs		
Leo Property, fit new lamps	£ 75.00	£ nil
Standfast	£ 276.58	£276.58
	£ 82.10	£ nil
Mr Cherry Picker	£ 936.00	£ 702.00
Fire Health and Safety		
H&S Risk Assessment	£530.88	£ 530.88
Legal, Professional & Admin		
Administration Charges	£480	£ nil
Accountancy annual	£460	£ 460.00
Management Fees	£1,968	£ 800.00
Appletons	£336.00	£ 48.00
CPM set up charge	£300	£ 300.00
CPM title registers	£108	£ 108.00
Humphrey & Co, first yr	£60	£ 60.00

(No issue was taken with the other charges claimed in the y/e account and these are accordingly payable in addition to the said allowed amounts in the accepted proportion of 9.375% per flat).

(2) Y/E 24 March 2018 (Estimated Budget)

	Disputed Budget	Allowed
Building insurance	£1,800	£1,800
Electricity (communal)	£ 180	£ 180
Water Supply & Sewerage	£3,050	£3,050
General Repairs	£3,000	£1,000
H&S Risk Assessment	£ 322	£ 322
Cleaning	£1,250	£ 420
Window cleaning	£ 900	£ 400
Pest Control	£13,000	£3,000
Fire systems contract	£ 700	£ nil
Bank Charges	£ 120	£ nil
Management fees	£4,800	£3,200
Section 20 Consultation	£ 415	£ 415
Accountancy (annual)	£ 460	£ 460
Legal Fees	£ 600	£ nil
Project Manager	£1,000	£ nil
Reserve Fund	£3,600	£1,000
	£35,197	£15,247

Again, the lessees' liability being based on the accepted Service Charge proportion of 9.375% per flat.

131. The conclusions in respect of interest and ground rent will be noted above (at paragraphs 124 to 126) and apply across both years.

Section 20C

132. In the light of the Tribunal's conclusion above as to the recoverability of legal costs the issue of making a direction to prevent recovery of legal costs under the service charge does not strictly arise. However, for the avoidance of doubt if called upon to exercise its jurisdiction under section 20C the Tribunal is in no doubt that it would exercise its discretion in favour of the Applicants.

133. Such a direction would probably be just and equitable simply having regard to the obvious measure of success that the Applicants have achieved in this application. However, the consistently uncooperative conduct of the Respondent over the past couple of years as the Applicants have struggled to obtain information from it, together with its obvious failure to engage and assist the

Applicants or this Tribunal in these proceedings would unquestionably justify the making of a direction under the section in this case.

Right to Appeal

Pursuant to rule 36(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules') the parties are duly notified that they have a right of appeal against the decision herein. That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application (a) written reasons for the decision or (b) notification of amended reasons for, correction of, the decision following a review (under rule 55) or (c) notification that an application for the decision to be set aside (under rule 51) has been unsuccessful.

Dated as above.