FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UC/LIS/2019/0022
Property	**:**	Flat 1, Oakwood Court, Victoria Drive, Bognor Regis, West Sussex PO21 2EG
Applicants	**:**	1-9 Oakwood Court Management Company Limited
Representative	**:**	The Owen Kenny Partnership, solicitors
Respondent	**:**	Mark Stuart Lineton
Representative	**:**	
Type of Application	**:**	Service charges
Tribunal Member(s)	**:**	Judge D. Agnew
Date of Decision	**:**	4th July 2019

DETERMINATION

Background

1. By an application dated 28th February 2019 the lead Applicant, Mr Stuart Martin on behalf of himself and 65 other long lessees of flats at Vista, Fratton Way, Southsea, Hampshire PO4 8FD ("the Property) applied to the Tribunal for a determination under section 27A(3) of the Landlord and Tenant Act 1985 ("the Act") as to the payability and reasonableness of service charges levied in respect of the Property on account for 2018.

2. Directions were issued on 22nd January 2019 following a Case management hearing by telephone.

3. The case came before the Tribunal for hearing on 12th June 2019.

Inspection

4. The Tribunal carried out an inspection of the common parts of the Property immediately prior to the hearing. Those present for the Applicants were Mr Phil Williams ((Flat 64), Mr Tidd (Flat 48), Mr Stainton (Flat 55) and Mr Shaffery (Flat 61). Mr Martin was unable to attend the Inspection and hearing as he was abroad on business but he had given Mr Phil Williams authority to conduct the case on his behalf and that of the other Applicants. For the Respondent, those present were Mr Allison (counsel), Mr Martin Nichol of Mainstay (the Respondent's Asset Managers) Mr Cosgrove of the Respondent's managing agents and Ms Hannah Hayward of Penningtons (the Respondent's solicitors). Mr Peter Owens, a Chartered Engineer, and expert witness instructed by the Respondent (with leave of the Tribunal) was also in attendance.

5. Vista is a mixed use block containing one commercial unit on the ground floor and 69 residential units situated in a busy location close to the centre of Southsea on a busy main road with several large retail units and a hotel in the immediate vicinity.. There is a car park area under the flats. The Property was constructed in or about mid 2009.

6. Vista is part of a larger development comprising three blocks of flats and commercial units, the other two blocks being known as Horizon and Outlook. Horizon comprises 51 units and Outlook 47. Somewhat bizarrely, the heating and hot water systems for both Vista and Horizon are run from boilers in the Vista block, albeit that Vista and Horizon are now in different freehold ownership.

7. On the inspection the Tribunal first went to the flue dilution plant room where we saw the stainless steel flue pipes where the exhaust gases are mixed with air and are carried to an external grille.

8. Next we went to the basement where we were shown a number of cast iron boiler parts that had been removed from a heating boiler.

9. We then went to the plant Room where the two boilers which supply the hot water system for both the Property and Horizon are situated. We

were shown the meter cupboard which houses the block electricity meters and fuse board. We were also shown the riser pipes that carry hot and cold water from the basement to the 10th floor which, we were told, had recently been insulated by the developer of the building.

10. We then went out onto what is known as the Podium, an open area of ground covered in artificial grass and bounded by raised flower beds. Moving to the front of the building we were shown a number of wooden planters which were bereft of any planting.

Matters in issue on the 2018 on-account demand

11. An initial demand for an on-account payment for 2018 was made on 16th January 2018. This was challenged by the lessees, as a result of which the then managing agents, Warwick Estates Property Management Limited, reviewed the matter and a revised demand was issued on 9th July 2019. The total amount claimed was £291,544.99. Four items were challenged as follows:-

    General minor repairs: £10,000

    Door entry and lock repairs: £9,400

    Refuse and bulk item removal: ££8,288

    Garden and Grounds Maintenance: £3,500

    Boiler maintenance: £14,000

    Planned preventative Maintenance (PPM): £4,000

12. During the course of the hearing Mr Williams accepted that the item for General minor repairs and Door entry and lock repairs could be left for now and, if appropriate, the lessees would challenge this item when the final accounts for 2018 had been produced.

Boiler maintenance

13. The biggest item challenged by the Applicants was the provision of £14,000 towards the cost of replacing of one boiler and the repair of the other which were part of the heating and hot water system for both Vista and Horizon. In a nutshell, the Applicants' case with regard to this item was that the boiler failures which occurred in 2018 were attributable to lack of maintenance of the system. In particular, a lack of corrosion inhibitor in the system had caused the seals to leak and one of the boilers to fail completely. The manufacturer's Operating Instructions (a copy of which was in the hearing bundle) warns that system damage can occur through inadequate cleaning and maintenance and it recommends that a maintenance contract be entered into. This document also states that system failure can be caused by corrosion and scaling and that accordingly the fill and make-up water should be checked to comply with the system requirements. In the case of Vista, however, there was

no maintenance contract in place until July 2018 when the current managing agents were put in place.

14. The Applicants referred to the report of Mr Owens in support of their case. In his evidence to the Tribunal Mr Owens confirmed that in his opinion the cause of the boiler failure was long term creeping corrosion causing the seals to fail and allow seepage of water. The corrosion over time had not been helped by lack of an inhibitor. He said that the type of boiler concerned should have an economic life expectancy of 20-25 years. The boilers in this case were only 9 years old when the failure occurred. Corrosion inhibitor would, or should, have been applied if there had been in place a proper maintenance contract.

15. The Applicants maintained therefore that as the cause of the boiler failures was down to the landlord failing to ensure, through its managing agents, that the system was properly maintained it was not reasonable for the lessees to have to pay to rectify the problem. Further, they maintained that much of the cost incurred was for the hire of a temporary boiler whilst one of the permanent boilers was out of commission. This cost was unreasonably incurred as the temporary boiler was unnecessary, demonstrated by the fact that when the one boiler was repaired it alone ran the system for a period. Further, the developers had provided, at no cost to the lessees or the freeholder, a temporary boiler whilst modifications to the system were carried out from November 2015 to October 2017. This had been removed shortly after the boiler failure. The lessees suspect that the recommissioning of the permanent boilers was not carried out sufficiently rigorously as the catastrophic failure occurred only 11 days after the recommissioning. If this is the case they argue that the temporary boiler supplied by the developer should not have been removed until the system had been thoroughly checked and tested. If this had occurred the temporary boiler would or should still have been available for use free of charge to the lessees.

16. In answer to the point that a temporary boiler was unnecessary, Mr Owens was firmly of the opinion that the hire of the temporary boiler was “absolutely necessary”. It ran for one month. He considered that it would not have been possible to carry out the repairs to either boiler without the temporary boiler.

17. The Applicants accepted that there was some benefit to them in having a new boiler earlier than should have been the case. They therefore proposed that they should bear only 9/25ths of the costs.

18. The Applicants say that during the four months of winter in 2017/18 they were deprived of heating and hot water on more than 20 occasions, each lasting between half a day to several days, requiring them to use electrical appliances at considerable extra cost. They claim the extra cost

by way of a set-off. They calculate this at £89.88 per leaseholder. They also say that each lessee's share of the costs should be capped at £250 per lease as there has been no consultation as required under section 20 of the Act. Finally on this head of claim, the Applicants maintain that the £8,000 held in the reserve account should be utilised towards the boiler maintenance costs.

19. The Respondent's case on this item is that it is the primary duty of the Respondent to carry out the repairs to the boilers, that the work had to be done and if the Respondent has a claim and is successful in recovering damages from the developer then those damages would be credited to the leaseholders at some stage in the future but that does not affect the lessees' responsibility to reimburse the landlord's costs of this item in the meantime.

20. It was the developer that removed the temporary boiler that had been in place whilst their work to the system was being carried out and it was removed without any prior notice to the Respondents. The Respondents had no right to retain this temporary boiler. As has been noted above, Mr Owens' opinion was that a temporary boiler was absolutely necessary to enable the boiler repairs to be carried out. The Respondent acted upon professional advice in that regard.

21. The 2018 budget was the first occasion that the lessees had been asked to pay substantial contributions towards the costs of maintaining the heating and hot water systems. Had there been a regular maintenance contract in place the cost of this would have to be offset against the cost of reactive repair.

22. The case of *23 Dollis Avenue v Vejdani [2016] UKUT 365* is authority for the proposition that there is no requirement to consult in relation to budgeted sums claimed on account of costs to be incurred.

23. With regard to set-off of the extra electricity costs, the Respondent denies that it is responsible for any increased costs. Mr Allison argued that the Applicants would have to prove, first, that the alleged losses had occurred and secondly, that the losses occurred as a result of the Respondent's breach of covenant. He maintained that insofar as the cause of the boiler failure may have been due to lack of corrosion inhibitor in the system and/or lack of regular maintenance, it has to be borne in mind that the respondent only became the freehold owner and therefore the landlord since 14th February 2014. Any failure to employ corrosion inhibitor and lack of regular maintenance prior to that point would have been the responsibility of the previous landlord.

24. The landlord has a discretion as to how the reserve fund is utilised.

General minor repairs (£10,000) and Door entry and lock repairs (£9,400)

25. Mr Williams said that these items would be challenged, if necessary, when the final account for 2018 had been produced and so he would not pursue a challenge to these items in the on-account demand.

Refuse and bulk item removal £8,288)

26. The Applicants' challenge to this item was that the managing agents arranged and paid for a man to travel down from Fleet to Southsea to bring out and return the refuse bins for refuse collection. The Council were unable to do this due to the major works to replace the cladding to the block by the developer that were being carried out. The Applicants believe that Lindon Homes have accepted that the lessees should not have to pay for this.

27. The Respondent says that the cost also includes the cleaning of the bin area. Insofar as this cost may be recovered from the developer the lesees will receive a credit but in the first instance this is a proper budgeted cost for the lessees to pay.

Gardening costs (£3,500)

28. The Applicants say that the area containing the large planters at the front of the building was sealed off whilst works were being carried out to the cladding of the building and scaffolding erected. No gardening was carried out in 2017 or 2018 in respect of this area.

29. The Respondent says that at the time when the budget was set it was not known whether the gardening costs would be incurred in 2018 but it was prudent to provide for such costs.. It accepts that services of this type were not in fact supplied for the majority of the service charge year. The case of *Knapper v Francis [2017] UKUT 3* is authority for the reasonableness of on-account service charges to be assessed as at the date when the payment is due.

Planned Preventative Maintenance (PPM) (£4,000)

30. The Applicants' case under this head was that the then managing agents were about to be replaced and that it was unlikely that this item, which is for a full assessment for the maintenance of the building over the long term would be carried out. The lessees accepted, however, that a ten year plan would be beneficial.

31. It was the Respondent's case that at the time when the budget was prepared it was reasonable to include this item which the Applicants had

in fact requested, albeit in the event the expenditure was not incurred in 2018.

Apportionment of costs

32. The lease sets out fixed percentages payable by the lessees for insurance, building services and estate services costs. However, the lease also provides that, alternatively, the percentages shall be such as the landlord may otherwise reasonably determine. The Applicants say that the service charges are not being apportioned in accordance with the leases. They also contend that the lease clause permitting alteration of the apportionment at the landlord's discretion is an attempt to avoid the statutory regulation of service charges under the Act and are thus void. They cite the cases of *Windermere Marina Village Limited v Wild and others [2014] UKUT 0163(LC)* and *Gater v Wellington Real Estate Limited [2014] UKUT 0561)LC)* Estate in support. They maintain that if the landlord wishes to change the apportionment this has to be agreed in writing and signed as a deed in accordance with the lease.

33. The Respondent denies that the clause in question purports to oust the jurisdiction of the Tribunal. It accepts that the Tribunal retains jurisdiction to determine whether the apportionment as determined by the Respondent, being different from that stated in the lease, is a reasonable apportionment.

34. The Respondent says that as far as it can tell the apportionments being applied are those that have always been applied since the leases were first entered into. There are two types of service charges: estate charges and building costs. The estate charges are apportioned on a per unit basis and the building costs are apportioned according to square footage.

35. Costs of running the heating and hot water have always, as far as the Respondent can tell, been charged on a usage basis as the building has always allowed for the metering of heating use. The Respondent claims that an estoppel by convention has arisen in respect of the apportionment of the service charge costs. In answer to this point the Applicants point out that they have for a long time been objecting to the apportionment of the costs carried out by the managing agents and requiring them to abide by the lease terms.

The lease

36. The lease itself is a very short document. Most of the terms are set out in an accompanying "Lease Book" which sets out to explain in more modern and straightforward language what is usually contained in a more formal lease. The provisions of the "Lease Book" are incorporated into the lease itself.

37. The lease deed does contain the specified proportions of the service charge payable by the lessee. In the example included in the hearing bundle the proportions are stated to be 0.7135 % for the lessee's share of building services and 0.5427% of estate services costs. In each case is added "or such part as the landlord may otherwise reasonably determine".

38. Paragraph 12.7 of the Lease Book refers to a budget being issued 2 weeks before the end of the service charge period (i.e. to 31st December in each year). This is to show the estimated service charge costs for the next service charge period and the estimated service charge for the particular apartment based on those estimated costs and the amount the lessee will be required to pay on account. By paragraph 12.11 the lessee is required to pay to the landlord in advance on account of the service charge the amount shown in the budget. Then, by paragraph 12.12 an annual statement is to be provided which is a service charge statement setting out the actual service charge costs that have been incurred and the amount due from the lessee. By paragraph 12.13 it is provided that if the amounts paid on account of service charge are less than the service charge shown on the service charge statement the lessee must pay the balance within 14 days. If the amounts paid are more than the actual expenditure the surplus must be used first to pay off or reduce the amount the lessee owes the landlord. Any residue is to be used as a reserve against future expenditure.

The relevant law

39. By Section 27A of the 1985 Act it is provided that:-

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

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

(3) An application may also be made to a Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvement, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
(a) the person by whom it 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.

40 By section 19 of the Act:-
Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is payable, and, after the relevant costs have been incurred, any necessary adjustment shall be made by repayment,
reduction or subsequent charges or otherwise.

41. Section 20 of the Act and the regulations thereunder, set out the consultation requirements which must be complied with if a landlord is to recover costs incurred in excess of £250 for qualifying works. For the reasons given below, this section is not relevant to on-account demands for service charges where the costs of the work have not yet been incurred. The requirements are therefore not relevant to this application and the Tribunal does not intend therefore to set out the requirements, which are very detailed, in these reasons.

Discussion and Determination

42. The first point that the Tribunal would make is that it must be emphasised that this is a case for the determination of the reasonableness of an on-account demand for service charges. It is not the appropriate forum for determining whether, if the landlord has been in breach of covenant to supply heating and hot water, the lessees should be entitled to set-off against a claim for monies due to the landlord the extra cost of having to use electric heaters. That would involve at the very least a detailed analysis of the extra heating costs incurred by each individual lessee and is more appropriate for a County Court action. The Tribunal does not therefore propose to determine that the on-account demand should be reduced by such a set-off.

43. The challenge to the General minor repairs and to the Door Entry and Lock Repair of £10,000 and £9,400 respectively was not pursued by the Applicants and the Tribunal finds that these were reasonable amounts to include in the budget. This does not preclude the Applicants from challenging the actual costs for these items once the final accounts for 2018 have been received.

44. With regard to the Gardening costs and PPM the Respondent's justification for inclusion of the figures of £3,500 and £4,000 respectively was based on the decision in the case of *Knapper v Francis* referred to above which is authority for the proposition that the reasonableness of items included in an on-account demand is to be assessed at the time the leaseholder's liability arises and that it is immaterial if the monies budgeted for are not actually spent on that item.

45. The Tribunal is very well aware of that decision as the Chairman in the instant case was also Chairman of the First-tier Tribunal in *Knapper v*

Francis and whose decision was upheld by the Upper Tribunal. That decision is appropriate in the normal case where a budget is set towards the end of a service charge year to cover anticipated expenditure in the following year. However, that is not the situation in the instant case. Here an initial budget was issued in January 2018 for the 2018 service charge year. At that time the same sum, £3,500, was included in the budget. That budget was superseded by a budget issued in July 2018. The Respondent in its statement of case at paragraph 54 accepts that , in the event, services of this type were not provided for a majority of the year but at the time when the budget was set, it was unknown for how long this state of affairs would prevail and so it was reasonable to include provision for such costs in the budget.

46. The Tribunal accepts that in July 2018 it was reasonable to include an amount for Gardening and Grounds Maintenance in the budget but not at the cost for a full year. In the Tribunal's view the situation has to be looked at as at July 2018. In those circumstances the Tribunal finds that one half of the sum budgeted for (i.e. £1,750) was a reasonable amount to include in the budget.

47. PPM is in a different category. The £4,000 provision was for a one-off cost for the provision of a ten year maintenance plan as recommended by a surveyor. It is something the lessees had asked for. The lessees' objection is that by July 2018 Warwick Estates' tenure as managing agent was coming to an end (at the end of August) and therefore it was unlikely that the PPM would be commissioned. However, the Applicants do not know that and, more pertinently, Warwick Estates could not be sure of that at the time they prepared their budget. There was still five months of the service charge year to run and a new managing agent might well have been keen to put in hand the obtaining of a PPM scheme at an early point of their management. The Tribunal therefore finds that it was reasonable to include the estimated cost of the PPM in the 2018 budget.

48. With regard to the refuse and bulk item removal, it may well be that in due course it will be possible for this cost to be recovered from Linden Homes If the costs are recovered the lessees' service charge accounts should be credited accordingly, but in the meantime the service has to be provided and paid for. The lessees have had the benefit of this service. It is therefore right that a reasonable amount should be included in the budget for this item. The lessees say that the amount being paid to a man from Fleet to move the refuse bins is too high. The Respondent says that he did not just deal with the rubbish bins but also cleaned the bin area. The Tribunal has no detail of what his work entailed or what a comparable cost from a different contractor would be. In the absence of any further information the Tribunal finds that a provision of £8288 in the budget is reasonable. If the lessees wish to challenge the actual cost

when they see the end of year accounts they will need to produce comparable quotes from other contractors.

49. The Tribunal now turns to consider the provision of £14,000 for boiler repair and maintenance contained in the budget. By July 2018 when the revised budget was produced most of the costs were known and the actual final figure of £13,980 excluding vat was the cost of the boiler replacement and repair. The expected economic life of the type of boilers installed at Vista, according to Mr Owens is 20 to 25 years. One boiler broke down completely and the other required major repair after only 9 years in operation. That would indicate that either the boilers were not manufactured to the proper standard or they have been operated inappropriately. Again, Mr Owen's evidence was that there was no regular maintenance contract in place and that there would appear to have been no corrosion inhibitor applied to the system, both contrary to the manufacturer's advice. In those circumstances the Tribunal considers that the landlord bears some responsibility for the failure of the boilers. The Tribunal takes into account, however, that the current landlords have only been in place for five out of those nine years, but it is, in the Tribunal's view, unreasonable for the consequences of the landlord's shortcomings to be visited on the lessees. The Applicants accept that by having a new boiler installed now instead of in eleven to sixteen years' time, they receive a benefit. They have also benefitted from not having to pay for regular maintenance over the past nine years but they were not to know that the manufacturer's recommendations were not being followed. Doing the best it can with the information available the Tribunal has calculated a reasonable sum to be included in the budget for 2018 for boiler repair and replacement as follows. It has taken the estimated cost of £44,000 and multiplied it by 11 and divided the result by 20 where 11 is the number of years loss of use of the original boilers and 20 being the number of years of their expected life. The resulting figure is the "loss" suffered by the lessees. That figure is £22,200. We have then divided that figure by 2 being roughly the split of time for which the current and previous landlord owned the freehold. That produces a "loss" for which the lessees may be "compensated" by the current landlord of £12,100. Deducting that figure from £44,000 produces a figure of £31,900 which is the figure the Tribunal finds to be reasonable for the Applicants to pay in their on-account charge. The Tribunal points out that the terms "loss" and "compensated" are not in the foregoing to be taken in their strict legal meaning.

50. Turning now to the Applicants' argument that the £8,000 in the boiler reserve fund should have been used to reduce the amount demanded of the lessees the Tribunal finds that it would not be reasonable for the landlord to utilise the whole of the reserve towards the 2018 repairs. It will be prudent for an amount to be retained in case of further repairs are necessary and, in any event, provision for replacement of boilers in due course would be prudent. Once the end of year accounts are

produced it may be that the landlord might reasonably use some of that reserve to go towards the boiler work done in 2018. This would help to ameliorate the burden of a significant expense in this one year. However, the Tribunal is not prepared to find that the sum required on account should be reduced due to the presence of an £8,000 reserve.

51. With regard to the Applicants' contention that the estimated costs of £14,000 should be capped at £250 per lease because by July 2018 the costs had been incurred and were known and the landlord should have consulted with the lessees under section 20 of the Act, the Tribunal finds that this is not a sustainable argument. In *23 Dollis Avenue (1998) Limiited v Nikan Vejdani and another* referred to above the Upper Tribunal held at paragraph 33b that:

"there is no statutory limit to the amount that can be recovered by way of an on account demand under the lease other than under s19(2)."

The demand issued in July 2018 was an on account demand. The fact that the work to the boilers had been carried out by then did not convert it into a final account.

52. Finally, the Tribunal addresses the Applicants' contention that the service charges have been apportioned incorrectly and not in accordance with the lease. It is correct that neither the estate costs nor the building costs have been apportioned between the leaseholders on the basis of the percentage figures quoted in the lease. The estate cost apportionment is only slightly different: 0.5848% as opposed to 0,5427% quoted in the lease. The building costs apportionment has a bigger difference:1.6292 as opposed to 0,7135% in Mr Martin's lease. The evidence is that the current apportionment has been applied since December 2016 and an explanation for that apportionment was supplied by the then managing agents in February 2017.

53. The explanation is that originally the estate costs apportionment stated in the leases was on the basis of square footage of the individual units. As, however, all units benefit equally from the estate charges it was considered by the landlord more equitable for the costs to be apportioned equally. With regard to the building costs apportionment, this was altered from the original figure quoted in the lease when the Horizon block was sold to a different freeholder and the Outlook block is held on a long lease by a Housing Association. The current apportionment is on a square footage basis but as a proportion now of only the costs associated with Vista and ignoring any costs of the other two blocks. The Tribunal finds that the basis of the current apportionment is fair and reasonable. The question then is whether the landlord is entitled to vary the percentages quoted in the lease or

whether it has to be done either by agreement with the lessees and a deed of variation entered into or alternatively a Tribunal approve the variation under the Landlord and Tenant Act 1987.

54. The lease provides for the landlord to apply a reasonable alternative apportionment. The Applicants say that this is an avoidance clause which outs the jurisdiction of the Tribunal and is therefore a nullity and they cite the *Windermere Marina* and *Gater* cases in support of their argument. The Tribunal disagrees with the Applicants on this point. What those cases say is that the Tribunal's jurisdiction to determine a reasonable apportionment is not ousted by wording purporting to provide that the matter is one for the landlord or the landlord's agent. But in this case the Respondent is not trying to say that the landlord can alter the apportionment at its own discretion and that the Tribunal has no say in the matter. On the contrary, the Respondent accepts that the Tribunal does have jurisdiction to say whether the apportionment applied is reasonable or not. So, the two cases quoted by the Applicants do not have the effect of nullifying the lease provision.

55. What then of the argument that any variation has to be in writing and signed as a deed as paragraph 1.1 of the lease Book might suggest. This states that "your lease means your lease deed, this lease book, and any changes that both of us agree in writing and signed as a deed."

56. The flaw in the applicants' argument in this respect is that the Respondent is not seeking to vary the deed because the lease specifically states "or such part as the Landlord may determine" after the apportionment figure. There is therefore no need to vary the lease in order to change the apportionment.

57. That being the case there is no need for the Tribunal to go on to consider whether the lessees are estopped from denying the current apportionments.

58. The Tribunal has considered whether the current apportionments are reasonable and finds that they are. It is reasonable for the estate costs to be apportioned equally between those benefitting from the services and it is reasonable for the buildings costs to be apportioned according to size of unit. The Tribunal has not been furnished with the necessary information to be able to determine whether the figures for the buildings costs apportionment are in fact correct but the applicants have not suggested that they are incorrect based on square footage of the units within Vista alone.

Summary

In summary, therefore, the Tribunal finds that the following is a reasonable sum for the respondent to recover from the Applicants by way of on account service charge for 2018:-

£201,544.09 as budgeted less £12,100 for boiler repairs and £1,750 for garden maintenance. The resulting figure is £187,694.09. The charges are to be apportioned in accordance with the percentages set out at pages 211 to 213 of Tab 8 in the hearing bundle.

59. The Applicants have applied for an order to be made under s20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Any representations with regard to costs should be made in writing to the Tribunal (with a copy to the other party) within 14 days of the date that these Reasons are sent to the parties.

Dated the 9th July 2019
Judge D. Agnew (Chairman)

APPEALS

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

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

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