FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UB/LSC/2019/0017**
Property	**:**	**62c High Street, Cheshunt, Hertfordshire EN8 0AH**
Applicants (Tenant)	**:**	**Mr Roy Woodward**
Respondent (Landlord):		**Sigma Property Co Ltd**
Managing Agent	**:**	**Granby Martin (Mr Paul Carver)**
Representative	**:**	**Mr Charles Sinclair of Counsel**
Date of Application	**:**	**19th March 2019**
Date of Hearing	**:**	**16th July 2019**
Type of Application	**:**	**A determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985)** **Application under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings**
Tribunal	**:**	**Judge JR Morris** **Mr G F Smith MRICS FAAV REV** **Mr N Miller BSc**
Date of decision	**:**	**30th August 2019**

DECISION

Decision

1. The Tribunal determines that the following contributions to the service charges are reasonable for the years indicated ending 23rd June and payable:

Year	Contribution
2015	£345.06
2016	£393.93
2017	£8,942.20
2018	£409.28

2. The Service Charges for the year ending 23rd June 2014 were found not to have been demanded and therefore determined not to be in issue.

3. The Tribunal orders that none of the costs incurred by the landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Leaseholders of 62a, 62b, 62c, 62d, 62e, 64 – 70 and 72 High Street, Cheshunt, Hertfordshire EN8 0AH .

Reasons

Application

4. On 19th March 2019 the Applicant made an application for a determination of the reasonableness and payability of Service Charges incurred for the financial years ending 23rd June 2014, 2015, 2016, 2017 and 2018 (Section 27A Landlord and Tenant Act 1985)

The Law

5. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and is set out in Annex 2 to this Decision and Reasons

The Lease

6. A copy of the Lease for the Property was provided dated 17th December 1986 which was between Longland Investments Limited (the Landlord) (1) and Maureen Elizabeth Bonus and Sandra Elizabeth Bonus (the Tenant) (2). The Lease is for a term of 99 years from 4th June 1980 at a rent of £30.00 per annum. The leasehold interest was subsequently assigned to the Applicant. The freehold title to the Building, in which the Property is situated, and surrounding area was sold to the Respondent in October 2014 and a copy of the register of title for the freehold interest numbers HD33549 and HD410044 was provided.

7. The Applicant obtained a statutory extension of the Lease on 6th January 2016 from the Respondent. The Lease is now 189 years from 24th June 1980 at a peppercorn rent. A copy of the Lease extension was provided together with a copy of the register of title for the leasehold interest number HD561262.

8. The relevant provisions of the Lease were identified as follows:

9. Clause 3 of the Lease sets out the Tenant's obligations in respect of the service charge:
To pay to the Landlord for transmission to the Managing Agent hereinafter mentioned (or at the option of the Tenant to pay to the Managing Agent) as a maintenance contribution one tenth part of an annual sum of one thousand pounds being the estimated annual cost of doing the things (hereinafter comprehensively referred to as "maintenance") specified in the Second Schedule hereto such payments to be made in advance by two equal installments on the twenty fourth of June and the twenty fifth day of December in every year … and in case in any year ending on the twenty fourth day of June the said sum of one thousand pounds shall with any balance carried forward form any previous year be insufficient to pay the cost incurred for the maintenance in that year then likewise (subject to the proviso to Clause 7 hereof) to pay to the Landlord or the managing Agent as aforesaid an additional maintenance contribution of an amount equal to one tenth of the deficiency

10. Clause 4 states that the Managing Agent appointed by the Landlord *shall be responsible to the Landlord and to all the tenants for the time being of the other parts of the Building for superintending maintenance*

11. Clause 7 states that the Landlord will *take all reasonable steps to control payment of maintenance contributions and use all reasonable endeavours to secure the performance by the managing agent for the time being of the duties to be imposed on him by his contract*

12. Clause 11 of the Lease sets out the Landlord's obligations which are, amongst other things:
To maintain and keep in good repair and condition
(a) the main structure of the Building including the principle timbers and the exterior walls and foundations and the roof thereof
(b) the common parts
(c) the other parts of the Building not included in the foregoing sub paragraphs (a) and (b) and not included in this demise or the demise of any other part of the building
(d) to observe the covenants set out in the Second Schedule hereof

13. The Second Schedule describes all the parts of the Building and common parts to be maintained which includes the main structure and the roof of the Building. It also requires the Building to be insured as follows:
(6) Insuring with any first class insurance company or underwriters in such company's or underwriter's usual form of policy against (1) liability of Landlord and Tenant for claim for injury or accident to third parties in a sum of at least three hundred thousand pounds (or such other sum as may be mutually agreed by the Landlord and the Managing Agent) for any one accident and (2) for employers' liability in respect of the part time employee

(7) Insuring the Building in the joint names of the Landlord and the Tenants for the time being against loss or damage by risk normally covered form time to time under comprehensive policies issues by first class insurance companies or underwriters in the full reinstatement value thereof together with the architects and surveyors fees and three years loss of rent PROVIDED ALWAYS that the said insurance shall exclude (a) the amount which form time to time under the terms thereof is deemed to be excluded form each and every loss on building in respect of flood storm tempest and bursting or overflowing of water tanks apparatus and pipes after the application of the Conditions of Average and (b) breakage of plate glass which shall be the Tenants responsibility

14. A copy of a lease dated 31st July 2015 between the Respondent (Landlord) (1) and AP Wireless II (UK) Limited (Tenant) (2) of the roof to erect telecommunications equipment.

Description of the Property

15. The Tribunal did not inspect the Building and the Property on this occasion but the Judge had viewed it in relation to a previous case, a copy of which was provided in the Bundle (CAM26UB/LSC/2014/0056), and the description given in the reasons for that decision are repeated to some extent here with additions from the Application Form and Statements of Case. Photographs were provided to illustrate the specific issues raised in this case.

16. The Building in which the Property is situated is on the outskirts of the town centre and was constructed over fifty years ago (during the 1960s). It comprises 5 retail units on the ground floor and 5 duplex maisonettes on the first and second floors accessed by an external staircase at the rear and a terrace at first floor level. Four of the retail units are let to one commercial tenant. There is a right of way from the road along the side of the Building over a walkway to the car park at the rear.

17. The car park area at the rear is flanked by the Building and by another block of maisonettes. The Building and the other block are adjacent and at right angles to one another. There are garages to the rear of the Building but these are within the demise of the ground floor retail units. The description of the building in the Application Form states that these garages have now been made into extensions of the retail units. There is no right within the Lease for a tenant of the Building to park in the car park at the rear but the landlord has allowed one vehicle per unit to be parked there. There is no garden area and very little ground around that is not concreted.

18. The Building is a flat roof structure with tiles hung to the front and rear elevations. The windows and doors are a mixture of wood and upvc where individual tenants have replaced them. The roof has recently been replaced.

The Hearing

19. The hearing was attended by Mr Woodward, the Applicant and Tenant of the Property, Mr Charles Sinclair of Counsel, representing the Respondent and Mr Paul Carver, Director of Granby Martin, Chartered Surveyors and the Respondent's Managing Agent.

20. The Parties had completed two Scott Schedules. The first made an initial identification of the items of the service charges which were in issue with a brief reason for them being disputed by the Applicant and a response by the Respondent. The second Schedule elucidated further on particular items. The Schedules were read together at the hearing.

21. In addition, the Applicant provided a statement of case/response to the Respondent's statement of case and to Mr Carver's witness statement and a witness statement giving narrative to the items disputed.

22. The Respondent also made a Statement of Case in reply to the Application, and Mr Carver, Director of the Respondent's Managing Agent, provided a witness statement giving narrative to the responses made in the Schedules.

23. A number of other documents were provided in the Bundle including copies of email and letter correspondence between the parties and an Application for the Appointment of Manager submitted by the Applicant to support his arguments with regard to the reasonableness of the Management Fee.

24. Copies of the service charge accounts were provided for the years in issue. The costs are set out in the table below, it will be noted that the format varied slightly in some years.

Year ending	**23rd June 2014**	**23rd June 2015**	**23rd June 2016**	**23rd June 2017**	**23rd June 2018**
Items	**£**	**£**	**£**	**£**	**£**
Roof Works	834.00			85,839.18	
Accountancy Costs		780.00	780.00	780.00	720.00
Caretaking		50.00	600.00	600.00	600.00
Cleaning	330.00	70.00			
Electricity	121.53	150.64	139.52	282.84	212.81
Repairs/General Maintenance	120.00	490.00			
Buildings Insurance	3,056.49				2,787.87
Padlock/keys			19.75		
Refuse Collection				120.00	160.00
Professional Fees				660.00	
Plumbing				479.40	

Management		3,500.00	3,600.00	3,600.00	3.600.00
Total	4,462.02	5,040.54	5,139.27	92,361.42	8,080
Applicant's 1/10th Contribution	446.20	504.06	513.93	9,361.42	808.68
Management/ Accounting	334.00				
Insurance 1/10th Contribution				197.23	
Applicant's 1/10th Total Contribution	780.20			9,433.37	

Issues

25. The Applicant raised the following issues in the Application Form regarding the reasonableness of the cost of items of the service charge:

26. The costs incurred for the year ending 23rd June 2014 are not payable pursuant to section 20B Landlord and Tenant Act 1985 as having been demanded more than 18 months after the cost had been incurred.

27. The costs under the following heads of the service charge were submitted as being unreasonable for all the years in issue:
Accountancy Costs
Caretaking
Management Fees
Insurance

28. The costs were unreasonable for Plumbing and Professional Fees and a part of the Roof Repairs attributable to the scaffolding remaining in place longer to accommodate the sole needs of the telecommunications company for the year ending 23rd June 2017.

29. The Applicant also submitted that works had not been carried out as required under the Lease and that the apportionment of the Service Charge was unfair because there was an additional tenant in the form of a telecommunications company which rented the roof for its equipment.

30. The Tribunal explained that it cannot order that works be carried out, which it is alleged have not been undertaken in breach of the Lease, as this is outside its jurisdiction. In addition, it was noted that the apportionment of the service charge was specified as a particular amount (1/10th) in the Lease. Any alteration to such apportionment must be the subject of an application to vary the Lease and therefore outside the jurisdiction of this tribunal.

Evidence and Decision

Service Charge for year ending 24th June 2014

31. The Applicant submitted the cost of General Maintenance is not payable under terms of the Lease and costs incurred for the year ending 23rd June 2014 are not payable pursuant to section 20B Landlord and Tenant Act 1985 as having been demanded more than 18 months after the cost had been incurred. He also submitted the Maintenance and Accountancy costs were excessive.

32. With regard to the Applicant's submissions in respect of the costs incurred for the year ending 23rd June 2014, the Respondent explained that there had been a hiatus when they had purchased the Building. They had not received all the necessary information for the year ending 23rd June 2014 in order to submit a timely demand for the service charge. The Respondent confirmed that it was not demanding any payment of the Service Charges for this year.

Tribunal's Decision

33. The Tribunal noted that no charge had been demanded and that therefore it determined that the Service Charge for the year ending 23rd June 2014 was not in issue.

Accountancy for all years in issue

34. The Applicant submitted that the Accountancy Costs for all the years in issue were unreasonable because they were excessive. In oral submissions he said that these were very simple accounts with only 20 or so invoices. The accounts do not need to be certified. The accounts for 2016/17 would only have taken a matter of minutes to summarise for the purposes of section 21 Landlord and Tenant Act 1985. The Applicant was critical of the accountant's work referring to a number of errors that had been made.

35. The Applicant provided an email quotation at page 618 of the Bundle, from a firm of accountants of £130.00 plus VAT for certification, stating that there would be an additional charge if accounts preparation was required. The cost of a section 21 report would be £60.00 plus VAT but does not include the preparation of the service charge statement under section 21 Landlord and Tenant Act 1985. The Applicant submitted that on the basis of this evidence a charge of £450.00 was more than reasonable.

36. In oral evidence Mr Carver said that the quotation submitted was not comparable. The accountancy fees were a fixed charge made by CHP (Clifton House Partnership) irrespective of the number of transactions, corrections etc to the account. Even when there are major works on the Building the charges remain the same. The effect is one of 'swings and roundabouts' with some years requiring more work than others. The firm is situated in Cardiff and is used by the Respondent for several blocks. The Respondent has sought competitive quotes and found CHP to be the most reasonable. The Managing Agents provide the accountants with invoices and receipts for work carried out

and supplies, together with information in respect of the tenants. The accountants put this information into the required format for the service charge accounts and calculate the balances to be credited and debited. The funds are kept in a separate trust account as required by the legislation.

37. The Applicant asked why the accounts were certified under section 21(6) Landlord and Tenant Act 1985, which presumably incurred additional cost, when a fair summary had been provided in accordance with section 21(5) which was quite adequate. He said that the accounts were very simple with very few invoices, for which the accountancy cost seemed high.

38. Mr Carver said that the format of the statement that had been chosen was intended to ensure that the accounts could be easily understood by tenants. The accounts were no more expensive to produce than any other format. The freeholder was happy to obtain quotations from accountants nominated by the Applicant in an attempt to obtain better value as the freeholder received no financial benefit from the selection.

39. The Tribunal noted that there was no need for a manging agent to go out to a firm and that it must add to the costs to do so. Also, recent RICS accounting requirements meant that service charge accounts held by managing agents would need to be audited. An effect of this was that in some cases there would be relatively little additional work involved in a managing agent producing a service charge account, negating the need for accountancy fees. The Tribunal asked Mr Carver why, taking this into consideration, the Managing Agent did not undertake the preparation of accounts itself in respect of this Building. Mr Carver replied that he felt it important that they showed transparency in relation to the service charge trust accounts and the independent involvement of an accountant contributed to that.

40. Counsel for the Respondent stated that these costs are recoverable under paragraph 8 of the Second Schedule. He referred to the lack of comparable alternative quotations from the Applicant and stated that in the absence of evidence to the contrary the costs incurred should be determined to be reasonable.

Tribunal's Decision

41. The Tribunal found that although the accountancy charge was on the high side it was not unreasonable.

Caretaking for all years in issue

42. The Applicant submitted that the total costs for Caretaking are unreasonably high. The Applicant referred to a number of photographs that were provided on pages 651 to 694 of the Bundle. In particular he referred to 670 to 671 which had 'before and after' pictures of how he had found the site and how he left the site after he had carried out a litter pick and tidied up the bins. He also referred to pages 631 to 643 to illustrate the quantity of weeds that remained untreated.

43. Mr Carver stated in oral evidence that the caretaker visited the site once a month to keep the litter under control, to sweep up and undertake weed control. He also reads the electricity meter. He reports fly tipping and arranges for the removal of fly tipped items. He takes away those items that were not too large for him to dispose of when he could. He also checks for maintenance issues and reports these to the Managing Agents.

44. Mr Carver said the site was difficult to keep litter free as it was used as a thoroughfare. There was significant vehicle congestion which meant it was rarely if ever clear in order to thoroughly sweep and clean the site.

45. The Tribunal asked Mr Carver how the caretaker disposed of rubbish he found on the site. Mr Carver said that he uses the waste bins on site and when he removes items from the site, he takes them to a refuse company. The Tribunal observed that if he did not already have a waste carrier's licence, he ought to consider obtaining one. The Environment Agency could advise him.

46. There are two management visits a year but this depends on other works. While the works were being carried out to the flat roof, visits were much more frequent.

47. The Applicant submitted in oral evidence that the cost was excessive for a dozen visits per annum and this number of visits was inadequate to maintain the site in a good condition. He said fly tipping was a problem with some items being left for longer than a month. Even cars have been abandoned on the site. The Applicant said that he had tidied the area up on several occasions.

48. The Tribunal noted the photographs and commented that the site appeared to require very regular weeding, litter picking and bin monitoring. It was noted from photographs 629 and 630 that the commercial premises had their own refuse bins which were behind gates.

49. The Applicant referred the Tribunal to a letter at pages 320 to 321 of the Bundle, dated 28th February 2019, which he had written to the Respondent offering to litter pick and bin monitor for half an hour a week for 48 weeks at £10.00 an hour and to work an additional half a hour a month on weeding and sweeping at £10.00 per hour. The total cost with public liability insurance at £70.00 per annum would be £420.00. An additional charge of £50.00 would be made for disposal of rubbish excluding large items.

50. Counsel for the Respondent submitted that these costs are recoverable under paragraph 9 of the Second Schedule and in the absence of the Applicant disclosing any evidence to the contrary the costs incurred are reasonable.

Tribunal's Decision

51. The Tribunal found the site to be generally difficult to maintain in a clean and tidy state and that rubbish and litter could build up between the caretaker's visits.

52. The Tribunal considered the Applicant's evidence and accepted that if there were more visits the site might be kept better. However, The Tribunal's role is to determine whether the specific cost charged is reasonable for the work done. The Tribunal found from the evidence that, notwithstanding the photographs showing litter spilt out of the bins and discarded on the site, the caretaker did attend and carry out his duties. The site would have been in a far worse state if he had not. The Tribunal considered that in the knowledge and experience of its members, a charge of £50.00 a month for the work described was reasonable.

Management Fees for all years in issue

53. The Applicant submitted that the Management Fees of £360.00 per unit were unreasonable as no management work had been undertaken during the years in issue and that there had been failings in the Managing Agent's duties. The Applicant said in oral evidence that the managing agents have not done what they should have done. The Building is poorly maintained and, in most years, nothing had been done by way of repairs. The Applicant referred the Tribunal to the Service Charge Accounts and the invoices for each year and the photographs. He said that in the year ending 23rd June 2014 £120.00 was spent on decorating but this was for Flat 62e and should not have been charged to the Service Charge. Costs for the year ending 23rd June 2015 similarly refer to a demise and should not be charged to the Service Charge.

54. He said in written representations with regard to administration that:
- the invoicing for service charges and ground rent and the keeping of accounts had frequent mistakes,
- the supervision for caretaking was poor,
- communications and complaints from leaseholders had not been dealt with properly and the Managing Agents own complaints procedure had not been followed and
- the insurance had not been arranged in compliance with the Lease.

55. With reference to maintenance the Applicant said (with reference to photographs) that:
- apart from the railings around the terrace no decoration work had taken place over the past 15 years,
- the water pipes had corroded, the paint on the gas pipe was flaking and there were signs of wood rot,
- the drains leading from the terrace have been left with damaged covers,
- graffiti had not been cleaned off,
- a cable has been left hanging in front of 62b and 62c when the scaffolding was removed in August 2017 after the roof replacement,
- loose and damaged coping stones on a wall at the top of the steps leading up to the flats were left unrepaired until October 2018,
- the vandalised door to the electricity meter cupboard for the Building's communal lighting was left unrepaired until November 2018,
- there are cracks in the mortar between the brick work at one end of the Building.

56. In addition, the Applicant considered the Managing Agents had been slow to start the section 20 consultation procedure in respect of the roof repairs leading to damage from leaking roofs and unnecessary temporary repair. It took over a year for the Agent to realise that the Lease only allowed £100 to be demanded in advance.

57. The Applicant also referred the Tribunal to a Notice under section 22 of the Landlord and Tenant Act 1987 to be served prior to an application for the appointment of a manager in support of the points he had made.

58. He said that he did not dispute that the lease allowed management fees to be charged. What he disputed was the amount of the charge which he submitted should be in the region of £180.00 to £240.00 (£150.00 to £200.00 plus VAT) per annum.

59. Mr Carver in a written witness statement responded to the issues raised in respect of Management Fees.

60. He said there was a very limited amount of external paintwork. The windows are all upvc as are the soffits, having been replaced as part of the major roof works. The window reveals on the front elevation could do with repainting but he did not agree that they were in immediate need of attention.

61. At the hearing the point was made that it may have been cost effective to have painted these when the scaffolding was in place. Mr Carver in the course of discussion said that the scaffolding had been erected at roof height and additional scaffolding would have had to have been added at a lower level to enable access to the reveals. This would not necessarily have been any cheaper than erecting scaffolding at a later date specifically to paint the reveals.

62. Mr Carver said other areas which may require decorating are the rendered panels adjacent the front doors but all the tenants except the Applicant have painted them. The Applicant's front door is the only timber door and its condition tends to detract from the general appearance more than the unpainted panels. The soffit boards to the garages are peeling and would benefit from replacing with upvc. This will likely be part of future section 20 works which will include the car parking area.

63. He said the gas pipe paint is flaking but the pipe itself is sound. If it is to be painted it will need to be done in yellow which is likely to be conspicuous and an eyesore.

64. He agreed that there is missing mortar under the coping stones in the parapet walls surrounding the balcony. This appears to be due to differential movement and ideally could be cut out and repointed. However, he added that it is not causing any significant issues at the present time. There is evidence of cracking in both gable end walls of the Building due to differential movement. These are not so serious that they need monitoring. The cracked drain covers are being replaced as part of works to be undertaken to the balcony roof and the unblocking of surface water drains has been undertaken. There is faded graffiti in three areas and this will be cleaned off.

65. With regard to the cable, Mr Carver said that it was not known whether it was live and arrangements can be made to have it re-fixed. However because of the height it would require a cherry picker of scaffold tower. To reduce costs for tenants it would be sensible to wait until there is a need for such item on site.

66. Overall, Mr Carver considered that the site was well managed, that urgent works with regard to the roof had been carried out and other works were in hand. Counsel for the Respondent submitted that these costs are recoverable under paragraph 8 of the Second Schedule. The Respondent stated that in the absence of the Applicant disclosing any evidence to the contrary, such as alternative quotations, the costs incurred are reasonable.

Tribunal's Decision

67. The Tribunal is of the opinion that this is a relatively small residential block and accepted that there is an optimum charge below which it would not be economic for a managing agent to carry out the work. In addition, the site is not an easy one to manage, being mixed residential and commercial with an access used as a thoroughfare from the main street. Nevertheless, the Tribunal found that the Management Fee was too high for the work undertaken. The Applicant had not adduced evidence of management fees in the area by way of alternative quotations, therefore, the Tribunal used the knowledge and experience of its members to determine a reasonable charge. The Tribunal determined that a fee of £240.00 (£200 plus VAT) was reasonable.

Repairs for year ending 24th June 2015

68. The Applicant submitted that the Invoice of £490.00 for K Fletcher dated 26th September 2014 should not have been charged to the Service Charge. He stated that it clearly shows that the work was internal re-decoration and a new carpet and refers to flat 62e as being where the work was carried out.

69. It was conceded by the Respondent that the Invoice in question was for work carried out on 62e and it had been sent to the managing Agent in error. It should not have been charged to the Service Charge.

Tribunal's Decision

70. The Tribunal found that the cost of £490.00 for the work charged under the invoice on page 419 of the Bundle was for internal re-decoration and a new carpet in flat 62e and therefore, as conceded by the Respondent, was charged to the Service Charge in error and so was not reasonable or payable.

Roof Works for the year ending 23rd June 2017

71. The Applicant stated in his written statement that a part of the cost of the roof works was for scaffolding which remained in place after the works were completed. He submitted that the cost incurred was a minimum of £500.00.

72. The Applicant added that although the roof works were completed in September 2016 they could not be 'signed off' until the telecommunication equipment had been re-sited. The surveyor who oversaw the work submitted the final invoice from CHPK Limited on 19th July 2017 and the scaffolding was removed soon afterwards in August 2017. The final invoice includes the following:
"Additional fee due for dealing with scaffolding issues" £500 plus VAT totalling £600.00.

73. In oral evidence the Applicant stated that the terms of the Lease with AP Wireless required the Landlord to ensure continuity of supply no matter what work was undertaken on the roof.

74. In a written statement the Respondent denied any additional costs were charged to the Residential and Commercial Leaseholders of the Building through the Service Charge. The contractors charged the Roof Space Leaseholder directly for work that related solely to the Telecommunication Equipment. Mr Carver in his witness statement said that he had checked the position with the contractor who confirmed that the cost relates to extra scaffolding that was required to accommodate the access of the materials to the roof arising from our need to ensure that there was no encroachment to the leaseholders' access to their properties on the ground floor. The extra time that the scaffolding was up beyond the roof works was charged to the Lessee of the roof space.

75. In oral evidence Mr Carver said that the roof needed replacing and it was found that the telecommunications equipment would have to be moved in some way to enable this. Following discussions with AP Wireless and the telecommunications company leasing the apparatus, it was decided to temporarily relocate the equipment and affix it to the gable wall. Additional scaffolding was required to carry out this work.

76. When the roof had been replaced, it was intended to return the equipment to its original position. However, the regulations regarding the siting of telecommunications equipment had changed since the apparatus had been erected and it was found that the equipment could not be put back where it was originally. Further discussions therefore took place with AP Wireless and the telecommunications company and the solution was to permanently attach the apparatus to the gable wall.

77. The contractors were responsible for the scaffolding which had to be kept in place while a solution was found with regard to the siting of telecommunications equipment. However, none of the costs for moving the equipment were charged to the Tenants.

Tribunal's Decision

78. The Tribunal found that although none of the costs of actually moving and affixing the telecommunications equipment to the gable end were charged to the Tenants, nevertheless the scaffolding had to remain in place while discussions were taking place and a solution found for the permanent siting of

the equipment. This incurred additional costs which were charged to the Tenants and therefore a deduction of £600.00 (£500.00 plus VAT of £100.00) should be made from the Roof Works item of the Service Charge for the year ending 23rd June 2017 to account for this.

Professional Fees for the year ending 23rd June 2017

79. The Applicant submitted that the Professional Fees for the work of the Moreton Partnership who are structural and heritage engineers were costs incurred in relation to the temporary re-siting of the telecommunications equipment during the roof works. Therefore, these costs should not be part of the Tenant's Service Charge.

80. Mr Carver said that a structural engineer was appointed to advise on the structural stability of fixing the equipment to the gable end wall.

Tribunal's Decision

81. The Tribunal found that these Professional Fees were part of the costs of moving and affixing the telecommunications equipment to the gable end and should not be charged to the Tenants' Service Charge. Therefore, the charge of £660.00 (£550.00 plus VAT of £110.00) for the year ending 23rd June 2017 was not reasonable or payable.

Plumbing for the year ending 23rd June 2017

82. The Applicant stated that the invoice relating to the item of Plumbing in the accounts for £479.90 is from Procare Maintenance, dated 16th June 2017 and states:
"Roofing team attended site to investigate a leak in a tenant's unit. Gained access to the roof area and cleaned. Primed felt and repaired defects."
The Applicant stated that this is clearly a roof repair of some sort.

83. Mr Carver in his witness statement said that this repair related to the flat roof/balcony area and as such was reasonably incurred.

84. In the course of discussion at the hearing and an examination of the invoice on page 522 of the Bundle it was found that the work had been carried out on the roof of Lek's Beauty salon, one of the retail units. It was noted that the retail units had garages which were demised to them and that they had extended their units into the garages. It was also noted that these garages had felt roofs. The description of the work ("Primed felt roof and repaired defects. Covered with torch on felt to seal and coated with Cromapol.") was consistent with a repair of the garage felt roof and not the balcony/walkway.

Tribunal's Decision

85. The Tribunal found that the invoice related to work on the garage roof of Lek's Beauty Salon which was part of the demise. Therefore, the Tribunal determined that the cost of the work was not chargeable to the Service Charge and so was not reasonable or payable.

Insurance for all years in issue

86. The Applicant stated that the polices of Insurance that he had been provided with for 2017 to 2018 and 2018 to 2019 do not meet the requirements of the Lease. Paragraph 7 of the Second Schedule of the Original Lease states that the Building is to be insured "in the joint names of the Landlord and the Tenants". The polices referred to are only in the name of the Respondent.

87. Paragraph 6 of the Second Schedule requires both the Landlord and the Tenant to be covered for liability "for claims for injury or accident to third parties", but under Section 3 "Property Owners Liability" of Lockton REAC Asset All Risks Policy Wording cover for "accidental injury to any person" is only provided "in respect of the Insured or the legal representative of the Insured".

88. The following e mail correspondence was included in the Bundle at pages 603 to 616:

89. The Applicant asked the Respondent's broker, Lockton:
Whether there was any benefit to a leaseholder in being named on a policy as compared with the leaseholder's interest only being noted
Whether there was any difference in premium in having the policy in the joint names of the landlord and the leaseholder or in the name of the Landlord alone.

90. In an email dated 5th April 2019 Mr Joe Scales BA (Hons) Cert CII, an Account Hander for Lockton answered:
The only difference between having the leaseholders noted as joint insured to having them noted under the policy would be that they could then, as the insured, be able to progress a claim under the policy rather than rely on the freeholder to do this.
The insurers would base their quotation on the risks information and would not charge an additional fee based on the arrangement above.
Mr Scales asked for further information and said he would pass the query to a colleague in order to answer the latter question with more certainty.

91. In an email dated April 12th 2019 Mr Joshua Paternoster ACII Chartered Insurance Broker said that having the policy in joint names *wouldn't cost the insurer any more than if the insurance was just in the name of the freeholder, it's just a little more administration etc in having both noted and administration a claim in some situations*.
The insurer would want to see the clause in the lease that specifies this way of insurance prior to agreeing anything of course, so [the broker] cannot definitely advise how the insurer would respond.

92. In an email dated 14th April 2019 to Mr Paternoster:
The Applicant said that Section 3 "Property Owners Liability" of Lockton REAC Asset II All Risks Policy Wording states "The Insurer(s) will indemnify the Insured or legal representative of the Insured…" *and then goes on to explain the details of what is covered under this section cover …*

The Applicant then asked whether this *covers the freeholder (named as the Insured) and perhaps the managing agent (as a representative who is managing the property), but not the leaseholders of the properties*?

93. In an email dated 15th April Mr Paternoster replied that the cover would not be a problem. *The provision on page 12 of the policy covers off the interests of others in a clause called the "Other Interests Clause" as follows*:

Other Interests
The interest of any freeholders lessors lessees licences underleases assignees mortgagees financiers lenders receivers tenants and occupiers are noted in the Policy it being understood that the details of such parties will be notified as soon as reasonably practicable to the insurers in the event of any claim arising under the policy.

94. The Applicant replied by asking more specifically:
If a visitor to the property was injured in an accident and chose to sue both the freeholder (the Insured) and the Applicant (as a leaseholder) in circumstances where the liability cover provided by the policy would definitely cover the freeholder [and responsibility could be attributed jointly to both freeholder and leaseholder], *would* [the Applicant as leaseholder] *be covered*.

95. The Applicant submitted that there were three possible answers to the question:
    1. Yes - a leaseholder would be covered
    2. No - only the Insured or the legal representative of the Insured would be covered
    3. Possibly - but the Insurer would make a decision one way or the other only once they were aware of the circumstances.

96. The Applicant submitted that the answer would be 1 or 2 unless the sixth extension listed under Section 3 had previously been added to the policy which he doubted as it was not referred to on the policy certificates.

97. The provisions of the policy were noted:

Extension 6 of Section 3 states:
Indemnity to Other Persons
The insurer(s) will also indemnify
ii) any PRINCIPAL to the extent that the contract or agreement between the Insured and such PRINCIPAL requires indemnity.

PRINCIPAL is defined as being:
Any party (other than any director or partner or the Insured or EMPLOYEE) on whose behalf the Insured undertakes work or provides services in connection with the BUSINESS

BUSINESS is defined as:
The BUSINESS of the Insured shown in the Schedule and conducted solely from the premises within the TERRITORIAL LIMITS including

v. the provision of services to TENANTS

TENANT is defined as:
Any company organisation or person who is the owner occupier lessor licensee or lessee of whatsoever status of any PREMISES and in respect of private dwellings or flats any member of the family or servants permanently living with them at the BUILDINGS

The PREMISES and the BUILDINGS include the Building and Property which are the subject of this Application.

98. In an email dated 25th April 2019 Mr Mark Harris, a Vice President of Lockton stated that "for a host of reasons [the broker] was unable to discuss specifics of this placement with any other party other than the Insured as detailed on the Certificate of Insurance. The Respondent denied that the policy was not or is not in accordance with the terms of the Lease.

99. Counsel for the Respondent took the Tribunal through the terms of the policy as set out above concluding that the Applicant was covered by the policy for the risks set out in the Lease (and for the hypothesis that he had put forward) and therefore the Insurance was in compliance with the Lease. He added that as the Insurance was placed in accordance with the Lease and the Applicant had only submitted the insurance premium was unreasonable and not payable because the policy was not in compliance with the lease in the absence of evidence to the contrary the premium was reasonable and payable.

100. The Applicant contended that even if he was covered, which he disputed, as the insurance was not in joint names it was not payable as held by His Honour Judge Huskinson in *Denise Green v 180 Archway Road Management Company Limited* [2012] UKUT 245 (LC). This supporting case had not been referred to in the Applicant's statement of Case or witness statements, nor were copies provided in the Bundle.

101. Counsel for the Respondent was able to locate the case on his lap top and time was given for him to acquaint himself with the judgement.

102. It was noted that the case related to two clauses in the Lease of Ms Green, the tenant. Clause 2 (vii) contained a covenant by the lessee in the following terms:
"To pay to the Lessor throughout the said term a yearly sum being one quarter of the sum expended from time to time for insuring the Building in accordance with Clause 4(ii) hereof such sum to be paid on the rent day next following the payment of the relevant premium and to be recoverable as rent in arrear….."

103. Clause 4 (ii) contained a covenant by the lessor in the following terms:
"To insure and keep insured with a reputable insurance company in the joint names of the Lessor and the Lessee each and every part of the Building including Architects' and other professionals fees from loss or damage by fire and all such risks as are normally included in a householders' comprehensive insurance policy and such other risks as the Lessor may from time to time determine to the

full reinstatement value thereof and will supply a copy and produce the original policy and evidence of renewal thereof to the Lessee whenever reasonably required so to do and will thereafter forthwith on each occasion when any such loss or damage shall arise apply all moneys received in respect of such insurance or insurances in rebuilding repairing and otherwise reinstating the Building to the same condition as previously and will allow a note of the interest of any mortgagee of this demise to be endorsed upon the policy."

104. The appellant said she was not liable under clause 2 (vii) of the lease to contribute towards the cost of the insurance placed by the respondent because the respondent failed to comply with the terms of clause 4(ii) in that it failed to take out insurance in the joint names of the lessor and lessee. The respondent argued that the appellant's interest in the building was protected by a "general interest" clause and that this was sufficient.

105. The LVT had concluded that the noting of the general interest was sufficient and that the insurance was not invalidated. However, Judge Huskinson concluded at [14] that:
"the question was not whether insurance had been placed which, on the balance of probabilities, would have been sufficient for the appellant if she had made a claim. The question instead is whether the respondent complied with its obligation under clause 4(ii) of the lease. The appellant's covenant is a covenant to pay one quarter of the sum expended for insuring the building "in accordance with Clause 4(ii) hereof". Accordingly, in order to be entitled to seek payment from the appellant under her covenant the respondent must show that it has placed insurance in accordance with clause 4(ii). This clause requires the respondent to insure the building "in the joint names of the Lessor and Lessee".

106. Judge Huskinson at [17] referred to *Woodfall Landlord and Tenant* which states at paragraph 11.093:
"A covenant by the tenant to insure in the names of the landlords is broken if the insurance is made in their names jointly with that of the tenant. Similarly, a covenant to insure in the joint names of the landlord and tenant is broken if the tenant insures in his name alone, but not if the tenant insures in the name of the landlord alone, for the addition of the tenant's name is purely for his benefit. A covenant to insure in the names of A and B is broken by insuring in the names of A, B and C."

107. At [18] of the judgement it was stated:
"For so long as the freeholder remains a respectable and responsible body with a respectable and responsible managing agent it may be that the appellant's position is just as secure under a policy such as that placed by the respondent as her position would be under a policy strictly in accordance with clause 4(ii). However, that in my view is not the relevant question. The relevant question is whether insurance has been placed in accordance with clause 4(ii). It has not been. There are some theoretically possible circumstances, for instance if the freehold came into the hands of a body which was not respectable and responsible and which did not choose to act so as to ensure after a relevant event (e.g. a fire) that the appellant's interest was properly notified to the insurers under the general interest clause, where I can see that the appellant could be in a

significantly less good position under the insurance as placed as compared with an insurance which was in accordance with clause 4(ii).

108. Counsel for the Respondent agreed that the case was similar in so far that the appellant in that case and the Applicant in this, were adequately covered in accordance with the provisions of the respective leases in respect of any claim. However, the leases differed in that under clause 2 (vii) of Ms Green's lease the payment of the premium was conditional upon the policy being placed in her name whereas this was not the case in the Applicant's lease.

109. Also, Judge Huskinson considered examples whereby Ms Green might be at a disadvantage were the policy not in joint names whereas in the present case there were no such disadvantages. The "general interest" clause required the insured to notify the insurer of the tenants, whereas the sixth extension listed under Section 3 automatically covers the tenants.

110. Counsel submitted that the policy was as good as if it had been placed in joint names.

Tribunal's Decision

111. The Tribunal found that the insurance was placed with a reputable insurer and that there was no evidence to suggest that the present landlord and its agent were not reputable and responsible. Should a situation arise in respect of which a claim is justified it was in the interests of both landlord and tenant to make that claim.

112. Given those points it was agreed that:
- Contrary to Paragraph 7 of the Second Schedule of the Original Lease it was apparent from the Certificates of Insurance provided for the years 2017 to 2018 and 2018 to 2019 that the policy was not in the joint names of the landlord and the tenants
- If the sixth extension listed under Section 3 of the Lockton REAC Asset II All Risks Policy Wording was included then the policy would meet the risks which the Lease required to be covered in paragraph 6.

113. Given those points the Tribunal identified the following issues:
a. The extent of the obligation to put the policy in joint names;
b. Whether the sixth extension was included in the policy;
c. Whether the Applicant was or could be at a disadvantage if the policy was not in joint names even if the sixth extension was included.

114. The Tribunal examined the lease and found that Clause 3 of the Lease requires the Tenant *To pay to the Landlord for transmission to the Managing Agent hereinafter mentioned (or at the option of the Tenant to pay to the Managing Agent) as a maintenance contribution one tenth part of an annual sum of one thousand pounds being the estimated annual cost of doing the things (hereinafter comprehensively referred to as "maintenance") specified in the Second Schedule hereto such payments to be made in advance.*

115. One of the things specified in the Second Schedule at Paragraph 7 is *Insuring the Building in the joint names of the Landlord and the Tenants*.

116. The Tribunal compared the obligations in clause 3 and Paragraph 7 of the Second Schedule in the Applicant's Lease with those of clauses 2 (vii) and 4(ii) of Ms Green's Lease. The Tribunal was of the opinion that, notwithstanding differences in the wording, both clauses 3 and 2(vii) created an obligation to pay for specified services. Paragraph 7 of the Second Schedule and clause 4 (ii) of the respective leases, required the landlord or managing agent to place insurance in the joint names of the landlord and tenants as one of those services. In both the present case and *Denise Green v 180 Archway Road Management Company Limited*, the latter service was not fulfilled.

117. The Tribunal therefore felt bound to follow *Denise Green v 180 Archway Road Management Company Limited*. It therefore determined that it was not reasonable for the Applicant to pay for a service specified in the lease which he or she was not receiving. The Applicant was entitled under the Lease to be a joint "Insured", but for the years 2017 to 2018 and 2018 to 2019 he was not.

118. No evidence was adduced to show that the sixth extension listed under Section 3 of the policy applied e.g. it was not stated on the face of the certificate and there was no affirmation from the broker. It was an extension and therefore presumably may not be included.

119. The Tribunal was of the opinion that if it had not been included then the policy would not meet the requirements of Paragraph 6 of the Second Schedule to the Lease. At best the Applicant's cover *for claim for injury or accident to third parties* would be reliant upon the Insured or the Insurer and not as of right under the policy.

120. Even if it had been included the Tribunal found that the Applicant would be denied a benefit under the policy which he would have had if he were a joint insured. This was illustrated by the e mail dated 25th April 2019 from Mr Mark Harris, a Vice President of Lockton, which stated that "*for a host of reasons [the broker] was unable to discuss specifics of this placement with any other party other than the Insured as detailed on the Certificate of Insurance*". The Applicant could not make a claim and could not obtain information about the policy in his own right.

121. The Tribunal determined that as the insurance policies for the years 2017 to 2018 and 2018 to 2019 were not in joint names the premiums are not reasonable and payable irrespective of the inclusion of the sixth extension in Section 3 of the policy.

122. The Tribunal determined that the insurance premiums for the years 2013 to 2014, 2014 to 2015, 2015 to 2016 and 2016 to 2017 are not reasonable and payable unless the Applicant can be provided with copies of the Certificates of Insurance for those years showing that they were placed in the joint names of the Landlord and the Tenants as required by Paragraph 7 of the Second Schedule of the Lease.

Summary of Service Charge Determination

123. The Service Charges for the year ending 23rd June 2014 were found not to have been demanded and therefor determined not to be in issue.

124. The following was determined reasonable by the Tribunal.

Year ending	**23rd June 2015**	**23rd June 2016**	**23rd June 2017**	**23rd June 2018**	**Tribunal's Determination**
Roof Works			85,239.18		Reduced by £600
Accountancy Costs	780.00	780.00	780.00	720.00	Reasonable
Caretaking	50.00	600.00	600.00	600.00	Reasonable
Cleaning	70.00				Reasonable
Electricity	150.64	139.52	282.84	212.81	
Repairs/General Maintenance	0				Unreasonable
Buildings Insurance	0	0	0	0	Unreasonable
Padlock/keys		19.75			
Refuse Collection			120.00	160.00	
Professional Fees			0		Unreasonable
Plumbing			0		Unreasonable
Management	2,400.00	2,400.00	2,400.00	2,400.00	Reduced to £200 + VAT per unit
Total	3,450.64	3,939.27	89,422.02	4,092.81	
Applicant's 1/10th Contribution	345.06	393.93	8,942.20	409.28	

125. The Tribunal determines that the following contributions to the service charges are reasonable for the years indicated ending 23rd June and payable:

Year	Contribution
2015	£345.06
2016	£393.93
2017	£8,942.20
2018	£409.28

Section 20C Application

126. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Landlord should not obtain any reimbursement of their costs arising from these proceedings through the service charge. The Applicant stated in written representations that he did not believe the Lease allows these costs to be passed to the service charge but he made the

application to be certain that they would not be passed on to him at 62c or the Leaseholders of 62a, 62b, 62d, 62e, 64 – 70 and 72.

127. The Tribunal examined the Lease and found that there are no provisions for the Landlord to claim the costs of these proceedings through the service charge.

128. If it were wrong in this, the Tribunal considered whether or not it is just and equitable in the circumstances to grant an order under section 20C.In doing so it took into account the conduct of the parties and the outcome of the proceedings.

129. The Tribunal found that in looking at the respective statements of case and responses on the Scott Schedules the Respondent had conceded the issue regarding the Service Charge demands for the year ending 23rd June 2014 before the hearing. Also, the accountancy and caretaking costs were, in the absence of evidence to the contrary, found to be reasonable.

130. With regard to the repairs and general maintenance for the year ending 23rd June 2015 and the items of plumbing, professional fees and roof repairs (additional time for scaffolding) for the year ending 23rd June 2017 and the management fees for all years the Applicant was found to have good cause to question the charges. In addition, the issue raised by the Applicant in respect of the Insurance was of particular importance and it was for the Landlord and its Managing Agent to ensure that its was taken out in joint names.

131. Therefore, the Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Leaseholders of 62a, 62b, 62c, 62d, 62e, 64 – 70 and 72 High Street, Cheshunt, Hertfordshire EN8 0AH.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 - THE LAW

1. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

2. Section 18 Meaning of "service charge" and "relevant costs"
   (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
      (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
      (b) the whole or part of which varies or may vary according to the relevant costs
   (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
   (3) for this purpose
      (a) costs include overheads and
      (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

3. Section 19 Limitation of service charges: reasonableness
   (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.

4. Section 20B Limitation of Service Charges: time limit on making demands
   (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
   (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been

incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Section 21B Notice to accompany demands for service charges.

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Section 27A Liability to pay service charges: jurisdiction

(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, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.